STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0080

In re the Marriage of:

Stacy Ann Bednar, petitioner,
Respondent,

vs.

Craig Richard Bednar,
Appellant.

Filed September 3, 2024
Affirmed in part, reversed in part, and remanded
Larkin, Judge

Hennepin County District Court
File No. 27-FA-19-6160

Linda S.S. de Beer, de Beer & Associates, P.A., Lake Elmo, Minnesota (for respondent)

Matthew J. Gilbert, Patrick A. McDonald, Gilbert Alden Barbosa, PLLC, Burnsville, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-husband challenges the district court's judgment and decree dissolving his marriage to respondent-wife. The majority of his challenges stem from the district court's determination that the parties' antenuptial agreement was invalid and

unenforceable. He also challenges the district court's imputation of income to husband for the purposes of its spousal-maintenance and child-support determinations. Finally, he challenges the district court's parenting-time and custody determinations. Because the district court did not err in its parenting-time and custody determinations, we affirm in part. But because the district court erred in deeming the parties' antenuptial agreement invalid and unenforceable, which affected the district court's determinations regarding the identification of nonmarital and marital property, the net valuation of nonmarital property, the dissipation of marital assets, and the attorney-fee award, and erred in imputing income to husband, which affected the district court's spousal-maintenance and child-support determinations, we reverse in part and remand for further proceedings.

FACTS

On June 11, 2005, appellant Craig Richard Bednar (husband) and respondent Stacy Ann Bednar (wife) were married. During the marriage, the parties had two children, OB, born in 2006, and EB, born in 2010. EB has special medical, mental-health, and educational needs.

On June 10, the day before the parties' wedding, the parties signed an antenuptial agreement. The parties had negotiated the terms of the agreement over the course of several months, and each party had the assistance of counsel. The comprehensive agreement outlined the parties' property rights during the marriage and upon dissolution of the marriage. It also disclosed husband's assets, liabilities, and income. Husband possessed substantial assets prior to the marriage, including an interest in Tiger Oak Publications Inc., an interest in Lazzari + Santori Partners LLC, and certain real property.

In the antenuptial agreement, husband listed his net worth as $7,795,658. The agreement stated that Tiger Oak, Lazzari, and other specified assets were husband's "separate property" and defined "separate property" consistent with nonmarital property, i.e., acquired before marriage or by gift or inheritance.[1] *See* Minn. Stat. § 518.003, subd. 3b (2022) (defining nonmarital property). The agreement also defined marital property. The agreement granted each party exclusive use and control of their respective nonmarital property during the marriage.

The parties acknowledged that the agreement would determine their rights in the event of a marriage dissolution. Under the agreement, if a party petitioned for dissolution, neither party would be obligated to pay a liability incurred by the other in connection with their respective nonmarital property, unless specified in the agreement. The agreement granted each party a percentage of the marital property: 65% for husband and 35% for wife. The agreement granted wife the right to seek spousal maintenance under Minnesota law after ten years of marriage. The agreement also granted wife, after five years of marriage, a share of the appreciation of husband's residential real property. Finally, the agreement granted wife a specified property settlement if the parties remained married for more than ten years. Specifically, paragraph 4.9 of the antenuptial agreement stated in part:

> If a petition for dissolution, separation or annulment is served by either party after the date which is more than ten (10) years after the date of the marriage, as a property settlement [husband] shall pay to [wife] an amount determined by

[1] For consistency with statute and caselaw, we use the term "nonmarital" in our analysis, instead of "separate."

multiplying the percentage identified in the table below by the amount that equals the difference between the fair market value of [husband's] net separate property and the fair market value of [wife's] net separate property on the date a petition for dissolution, legal separation or annulment is served by one party on the other. The parties agree that the valuation of their net separate property shall be determined as provided below.

Year	**Percentage**	**Year**	**Percentage**
10	10.0%	28	27.0%
11	10.5%	29	28.5%
12	11.0%	30	30.0%
13	11.5%	31	30.5%
14	12.0%	32	31.0%
15	12.5%	33	31.5%
16	14.0%	34	32.0%
17	15.5%	35	32.5%
18	17.0%	36	34.0%
19	18.5%	37	35.5%
20	20.0%	38	37.0%
21	20.5%	39	38.5%
22	21.0%	40	40.0%
23	21.5%		
24	22.0%		
25	22.5%		
26	24.0%		
27	25.5%		

The parties agree that the term "net separate property" for purposes of this paragraph 4.9 shall mean property that is defined herein as the separate property of a party (other than residential real estate) reduced by the amount of any mortgages, liens or other secured liabilities of a party, and reduced by the then prevailing capital gains tax, if any, that would be imposed by federal and state taxing authorities on the sale of such property if such property were sold by a party[.] The parties further agree that the amount of any property settlement provided herein shall be based on the fair market value of [husband's] net separate property (other than residential real estate) and [wife's] net separate property on the date a petition for dissolution, legal separation or annulment is served by either party on the other. *[The parties] further agree that any controversy solely arising out of the valuation of their*

> *net separate property shall be settled by arbitration in Minnesota, in accordance with the commercial Arbitration Rules of the American Arbitration Association*. The decision rendered by the arbitrator shall be final and binding, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. Arbitration shall be conducted by a single arbitrator chosen by the American Arbitration Association from its National Roster. *The arbitrator shall have no other authority or jurisdiction other than that of determining the value of [husband's] net separate property and [wife's] net separate property.*

(Emphasis added.)

Under the antenuptial agreement, each party was responsible for their own legal fees in a dissolution proceeding. However, if a party challenged the validity of the agreement and did not prevail, that party would be responsible for the defending party's attorney fees. The parties agreed that they had "thoroughly explored the substantive fairness" of the agreement and were aware of "possible future changes in their health, lifestyle and earnings." Paragraph 8.2 of the agreement provided that "[i]f any part of [the agreement] is held unenforceable, the remaining parts of [the agreement] shall remain enforceable."

On September 16, 2019, wife petitioned to dissolve the marriage. In her petition, she challenged the validity of the antenuptial agreement, arguing that it was procedurally and substantively unfair. In his counter-petition, husband asserted that the agreement was enforceable and requested a division of the parties' assets in accordance with the agreement. On January 13, 2021, husband moved the district court to compel arbitration in accordance with the terms of the agreement. The district court deemed the motion untimely. On January 20, 2021, husband again moved to compel arbitration. The district court acknowledged the motion but did not rule on it.

The parties agreed to an adjudication of the dissolution proceeding based on written submissions. On November 15, 2023, following a document trial, the district court filed an order dissolving the parties' marriage and entered judgment.[2]

In considering the validity of the parties' antenuptial agreement, the district court applied Minn. Stat. § 519.11 (2022) and the common law. The court determined that the parties' agreement satisfied the requirements of section 519.11. But as to the common law, the court determined that the agreement was not procedurally fair because it was procured under duress. The court also determined that the agreement was substantively unfair, invalid, and unenforceable.

In addressing custody and parenting time for the minor children, the court found that husband was in poor health, which caused the children to be in "physical danger." For example, husband had struggled to breathe while the children were in his care, including while driving one of the children in his vehicle. The court also found that husband had "domestically abused" wife. The district court awarded wife sole legal and sole physical custody of the children and limited husband's parenting time to every Saturday from 10:00 a.m. to 5:00 p.m.

In addressing the parties' incomes for purposes of child support and maintenance, the court found that wife was self-employed as a therapist and earned $3,200 per month

[2] The initial findings and order were prepared by a referee of the Fourth Judicial District and later approved by a judge of that court. *See* Minn. Stat. § 484.65, subd. 9 (2022) (governing the family court division in the Fourth Judicial District and providing that "[a]ll recommended orders and findings of a referee shall be subject to confirmation by [a] district court judge").

and that husband was unemployed, though he was previously the owner and chief executive officer of Tiger Oak and sole member of Lazzari. The court found that Tiger Oak entered Chapter 11 bankruptcy proceedings during the pendency of the dissolution case, that those bankruptcy proceedings were ultimately settled via stipulation, and that husband spent, by his own calculations, $746,905 in attorney fees on the bankruptcy proceeding and another $600,000 to settle that matter. The court imputed income of $30,000 per month to husband. The court found that husband had unknown monthly expenses and that wife's monthly expenses were $17,281. The court ordered husband to pay wife $8,000 per month in permanent spousal maintenance and $2,369 per month in child support.

In dividing the marital estate, the court found that the value of the estate at the time of the decree was approximately $1.5 million and that it had significantly decreased because husband sold off a majority of the assets during the bankruptcy proceeding. The district court ordered husband to pay wife a property equalizer in the amount of $2,501,978 and awarded wife both need- and conduct-based attorney fees in the amount of $247,145.

Husband appeals.

DECISION

I.

Husband contends that the district court erred by deeming the antenuptial agreement unenforceable.

Antenuptial agreements must be both procedurally and substantively fair. *Kremer v. Kremer*, 912 N.W.2d 617, 621-22 (Minn. 2018). Until 1979, antenuptial agreements

were solely governed by the common law. *Id.* at 622. In 1979, the legislature enacted section 519.11,[3] which modified the common law regarding procedural fairness. *Id.*

Whether an antenuptial agreement is procedurally fair presents a mixed question of law and fact. *Id.* at 627. Whether an antenuptial agreement is substantively fair also presents a mixed question of law and fact. *See McKee-Johnson v. Johnson*, 444 N.W.2d 259, 261 (Minn. 1989) (remanding for "further findings respecting substantive fairness requirements both at the inception and at the time of the dissolution"), *overruled on other grounds by Kremer*, 912 N.W.2d at 626.

When the facts are undisputed, the validity of an antenuptial agreement presents a question of law, which we review de novo. *Pollock-Halvarson v. McGuire*, 576 N.W.2d 451, 454 (Minn. App. 1998), *rev. denied* (Minn. May 28, 1998). "Ordinarily, the burden of proving that an antenuptial agreement is unfair and therefore invalid is on the challenger of the agreement . . . ," unless a presumption of fraud arises. *Kremer*, 912 N.W.2d at 627 n.7.

Procedural Fairness

"The common-law standard for procedural fairness is whether an agreement was equitably and fairly made." *Id.* at 622 (quotation omitted). An antenuptial agreement executed after August 1, 1979, is procedurally valid under section 519.11, subdivision 1, if two conditions are satisfied: (1) '"there is a full and fair disclosure of the earnings and

[3] The statute governing antenuptial agreements was recently revised. *See* 2024 Minn. Laws ch. 101, art. 3, § 1, at 718-21. Those revisions are inapplicable here because they did not take effect until August 1, 2024, "and appl[y] to agreements executed on or after that date." *See id.* at 721.

property of each party,'" and (2) '"the parties have had an opportunity to consult with legal counsel of their own choice."' *Id.* (quoting Minn. Stat. § 519.11, subd. 1).

The district court determined that the requirements of section 519.11 were satisfied, but it determined that the agreement was procedurally unfair under the common-law standard, which considers four factors:

> (1) whether there was fair and full disclosure of the parties' assets; (2) whether the agreement was supported by adequate consideration; (3) whether both parties had knowledge of the material particulars of the agreement and how those provisions impacted the parties' rights in the absence of the agreement; and (4) whether the agreement was procured by an abuse of fiduciary relations, undue influence, or duress.

Id. at 625.

In determining that the antenuptial agreement was procedurally unfair under the common law, the district court reasoned solely that the circumstances here are similar to those that supported a finding of duress in *Kremer*. In that case, the supreme court determined that wife was under duress when she signed an antenuptial agreement, reasoning that she signed three days before a destination wedding. *Id.* at 628. The facts regarding the antenuptial agreement in *Kremer* were as follows:

> For almost three years, Robbie and Michelle lived together as a couple on a farm in Fulda, Minnesota. Robbie owned and operated a farming enterprise. Michelle had three children from a previous marriage. *Robbie told Michelle that he would require an antenuptial agreement if they ever married. Michelle was ambivalent about such an agreement, and the parties did not discuss or negotiate any terms.*
>
> In August 2000, Robbie and Michelle decided to marry. They scheduled a destination wedding in the Cayman Islands for March 2001.

> As the wedding approached, and *without telling Michelle, Robbie contacted an attorney to prepare an antenuptial agreement. Robbie had a minimum of six contacts with the attorney over the course of at least a month. Without Michelle's knowledge, he furnished the attorney with copies of her tax returns.*
>
> On February 26, 2001, at his attorney's office, Robbie signed the antenuptial agreement ("the Agreement"). Later that day, he presented the Agreement to Michelle. *Robbie made clear that if Michelle did not sign the Agreement, the wedding was off. The couple was scheduled to leave for the Cayman Islands just three days later.* Family members had paid for their lodging and airfare to the destination, and some were already en route.
>
> *After being presented with the Agreement, Michelle attempted unsuccessfully to meet with the attorney who represented her in a previous divorce. On February 28, she met with a different attorney with whom she had no experience.* The attorney explained the terms of the Agreement, her rights under the law, and the potential impact of the Agreement upon dissolution of the marriage or Robbie's death. After receiving legal advice, Michelle signed the Agreement. The next day, the couple left for the Cayman Islands to be married.

Id. at 620 (emphases added).

The *Kremer* court concluded that the antenuptial agreement was procedurally unfair because it was procured by duress and because there was inadequate consideration, that is, the agreement did not sufficiently provide for Michelle, the financially disadvantaged spouse. *Id*. at 627-28. As to duress, the supreme court explained:

> As the district court found, "there was an overreaching" because *Robbie "intentionally created a situation where [Michelle] was pressured/coerced into signing"* the Agreement. This finding is well-supported by the record. Michelle's free will was overcome by Robbie's threat to call off the wedding and *the limited amount of time that Michelle had to consider the Agreement, consult with an attorney, and decide whether to sign it or not. Robbie knew that Michelle had reservations about signing an antenuptial agreement and*

> *that no terms had been negotiated. She was completely in the dark for more than a month while Robbie received legal advice and prepared the Agreement.* Robbie presented Michelle with his signed Agreement a mere three days before they were scheduled to depart for their destination wedding. As a result, Michelle was left to scramble to find an attorney, with whom she met on the day before the couple's departure.

Id. at 628 (emphases added).

The district court's explanation of its reliance on *Kremer* to find duress is limited to the following:

> The [supreme court] found that [the wife in *Kremer*] was under duress because the antenuptial agreement was signed just three days prior to a destination wedding. The [c]ourt makes a similar finding in the present matter, where the parties signed the prenuptial agreement the day before their wedding. The court finds that [w]ife did not have a meaningful choice whether or not to sign the antenuptial agreement.

"Duress is coercion by means of threats or other circumstances that destroy the victim's free will and compel her to comply with some demand of the party exerting the coercion." *Id.* "The test is not the nature of the threats, but rather whether or not the victim really had a choice, whether the victim had the freedom of exercising her will." *Id.* (quotation omitted).

As to duress, this case is readily distinguishable from *Kremer*, in which the husband secretly met with an attorney six times over the course of one month to prepare an antenuptial agreement, surprised wife with the agreement three days before their destination wedding, and threatened to cancel the wedding if wife did not sign. *Id.* at 620.

Unlike *Kremer*, wife in this case acknowledged in an affidavit that husband told her that he wanted an antenuptial agreement "in the spring of 2005" and that in March of 2005,

both parties "retained lawyers and began working on the document." Wife affirmed that the parties initially scheduled their wedding for April 2005 but cancelled that date because they could not reach an agreement and assumed that they would "be able to work out a fair agreement with the extra time." Wife further stated:

> *My lawyers continued to tell me that [husband] was not agreeing to any of their terms, making the negotiations very one-sided* and unproductive. However, the wedding date continued to get closer, and I was planning all of the details of the day. I essentially planned the wedding with little help from [husband].
>
> Finally, the day before the wedding, time had run out. I remember being extremely uncomfortable that day *while speaking with my attorneys. They told me that the agreement may not be in my best interests because [husband] would not allow for meaningful changes to the document. I did not allow myself to consider canceling the wedding*; that did not feel like an option for me. We had paid for nearly the entire thing, and all the smallest details had been taken care of. I had spent the last few months pouring work into planning and organizing the event. We had many out-of-town guests flying in, particularly from surrounding states and Texas and California. Many guests had already arrived the day before the wedding, for the rehearsal and pre-wedding festivities that were occurring just hours after meeting with the attorneys. The actual wedding reception was set up the day before, so at the time I was signing the prenuptial agreement the tent had been set up, the rentals were in process of going up, and all the final details were coming together.
>
> Further, my guests had purchased hotel rooms, flights, gifts, and more. It did not feel like I had a "choice" to cancel the wedding, but I knew that [husband] would do it in a heartbeat if the prenuptial agreement was not signed. I remember thinking of his temper, and that he would be extremely angry if I did not sign the agreement the way it read. The last thing I wanted was to anger him the day before our wedding. In hindsight, [husband] began showing his true colors throughout the prenuptial agreement negotiation process. He clearly wanted to protect himself and was not thinking about what I was giving up by signing the agreement.

> I signed the agreement less than 12 hours prior to our ceremony, not realizing the severe effect it could have on my future financial well-being.

(Emphases added.)

Unlike *Kremer*, wife's own affidavit shows that she had sufficient time to discuss the agreement with her lawyers and to consider her options. Although wife ultimately signed the antenuptial agreement the day before the wedding, she acknowledged that she retained counsel several months before the wedding to represent her in the antenuptial negotiations, cancelled an earlier wedding date because the parties could not reach an agreement, actively engaged in negotiations with husband, and was repeatedly advised by her lawyers that husband was standing firm on his demands and that the agreement may not be in her best interest. Wife nonetheless continued to make detailed wedding plans over the course of several months, despite the parties' inability to agree on the terms of the antenuptial agreement and despite wife's knowledge that husband insisted on such an agreement. Again, the record reflects that wife was aware months before the ultimate wedding date that husband was unwilling to marry without an antenuptial agreement.

Wife argues that we must defer to the district court's duress finding. A factual finding is clearly erroneous if it is "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). The district court's finding that "[w]ife did not have a meaningful choice whether or not to sign the antenuptial agreement" is not reasonably supported by the evidence as a whole, as explained above. Moreover, the district court erred, as a matter of law, in concluding that the undisputed facts here

constituted duress as that term is defined in caselaw and in reasoning that the circumstances here are comparable to the coercive circumstances in *Kremer*. In sum, wife failed to prove that the antenuptial agreement was procedurally unfair. *See Kremer*, 912 N.W.2d at 627 n.7 (stating, "[o]rdinarily, the burden of proving that an antenuptial agreement is unfair and therefore invalid is on the challenger of the agreement").

Substantive Fairness

As to substantive fairness, the district court determined that the agreement was unconscionable at the time of enforcement because wife would receive significantly less money than she would have expected to receive when she entered into the antenuptial agreement.

Antenuptial agreements must be substantively fair at the time of execution and at the time of enforcement. *See McKee-Johnson*, 444 N.W.2d at 267. "Substantive fairness guards against misrepresentation, overreaching and unconscionability." *Pollock-Halvarson*, 576 N.W.2d at 455. When evaluating substantive fairness at the time of enforcement, we consider whether a change in the parties' circumstances after execution would render enforcement of the agreement "oppressive and unconscionable." *McKee-Johnson*, 444 N.W.2d at 267. If the premises upon which the antenuptial agreement was based "have so drastically changed that enforcement would not comport with the reasonable expectations of the parties at the inception to such an extent that to validate" the agreement at the time of enforcement "would be unconscionable," then the agreement is substantively unfair. *Id.* In considering the substantive fairness of an antenuptial

agreement, courts must balance the freedom of consenting, informed adults to contract and substantive fairness. *See In re Est. of Aspenson*, 470 N.W.2d 692, 696 (Minn. App. 1991).

Here, the district court found that the agreement was substantively fair at the time of execution. In arriving at that determination, the district court considered application of paragraph 4.9 of the antenuptial agreement (quoted in the facts section of this opinion), which obligated husband to pay wife a percentage of "the difference between the fair market value of [husband's] net [nonmarital] property and the fair market value of [wife's] net [nonmarital] property, on the date a petition for dissolution, legal separation or annulment is served by one party on the other." As applied here, after 14 years of marriage, wife was entitled to 12% of the difference between those two sums.

The district court reasoned that when the parties signed the antenuptial agreement, husband's net worth was $7,795,658 and that wife would have expected to receive at least $935,478 of husband's nonmarital property under the agreement if husband's financial circumstances did not change. The district court further reasoned that wife was also entitled to receive 35% of the parties' marital property. The court found that "the terms of the antenuptial agreement, at the time of signing, would otherwise be conscionable."[4]

However, the district court determined that the antenuptial agreement was unconscionable at the time of enforcement as a result of "extreme unforeseeable

[4] The district court's finding that the terms "would otherwise be conscionable" is unclear because the district court's findings do not suggest or explain that *any* term in the agreement was unconscionable at the time of execution. Thus, we do not understand the phrase to somehow qualify the district court's finding that the terms were conscionable at the time of execution.

developments that occurred during the marriage due exclusively to [h]usband's conduct," including the reduction in husband's net worth, husband's dissipation of marital assets, and husband's decision to file bankruptcy for Tiger Oak, which took a toll on the parties' finances. The district court therefore found that the agreement was "invalid and unenforceable."

The district court's finding that the agreement was unconscionable at the time of enforcement was, once again, based on its application of paragraph 4.9 of the antenuptial agreement, which provided that wife would receive a percentage of "the difference between the fair market value of [husband's] net [nonmarital] property and the fair market value of [wife's] net [nonmarital] property, *on the date a petition for dissolution, legal separation or annulment is served by one party on the other*." (Emphasis added.) But the district court's application of that provision was inconsistent with its clear language. Under paragraph 4.9, the operable valuation date for division of nonmarital property was the "date a petition for dissolution, legal separation or annulment [was] served," which in this case was September 16, 2019. Despite that language, the district court based its substantive-fairness determination on the value of the marital estate at the time of document trial in 2023, four years after the relevant valuation date (i.e., service of the dissolution petition). Even though the district court correctly indicated that it needed to determine "whether enforcing the prenuptial agreement would be substantively fair if enforced today," it failed to recognize that application of the relevant term was based on the value of the parties' nonmarital assets in 2019, and not on the value in 2023.

Again, the district court found that at the time of execution, wife would have expected to receive at least $935,478 of husband's nonmarital property under the agreement if husband's financial circumstances did not change. The district court compared that recovery with the amount that wife would receive under the agreement at the time of the document trial in 2023 and found that wife would receive only $180,000 under the terms of the agreement, calculated as follows: 12% of $1.5 million, which the district court found was the "total estate."

But the correct valuation date for determining wife's share of husband's nonmarital property at the time of enforcement was September 16, 2019, the date on which wife served her petition for dissolution on husband. The district court found that in October 2019, approximately one month *after* wife filed for dissolution, the parties still had assets in excess of $6 million, excluding the unknown value of Tiger Oak, which did not enter into bankruptcy proceedings until *after* wife filed for dissolution.

In sum, the district court erred by failing to use the correct valuation date when determining that the antenuptial agreement was substantively unfair at the time of enforcement. And given the significant disparity between the district court's findings regarding the value of the estate on the correct date (over $6 million, plus the unknown value of Tiger Oak) and the value of the estate on the incorrect 2023 date ($1.5 million), the error prejudicially affected the mathematical portion of the district court's determination that the agreement was substantively unfair. *See Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993) (stating that on appeal, the appellant has the burden to show error and prejudice), *rev. denied* (Minn. June 28, 1993).

On this record, the district court erred in deeming the antenuptial agreement procedurally and substantively invalid. The agreement was valid, and the district court should have enforced it. The district court's failure to do so affected several components of the dissolution judgment and decree, which husband challenges. We address each in turn.

A.

Husband argues that the district court erred by denying his nonmarital claims. Whether property is marital or nonmarital is a question of law which we review de novo, but we defer to the district court's underlying findings of fact unless they are clearly erroneous. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). All property acquired by either spouse during the marriage is presumed to be marital property. *Id.* at 302. To overcome this presumption, a spouse has the burden of proving by a preponderance of the evidence that the property is nonmarital. *Id.* Nonmarital property includes property acquired before the marriage. Minn. Stat. § 518.003, subd. 3b(b).

Here, the district court concluded that it was "unclear" what husband considered to be his nonmarital property. We disagree. The antenuptial agreement defines the assets that husband possessed prior to the marriage as his separate, nonmarital property, and husband is therefore entitled to retain a portion of those assets, as set forth in the agreement.

B.

Husband argues that the district court erred by refusing to order arbitration in accordance with the arbitration clause in the antenuptial agreement. Again, the arbitration clause states that "any controversy solely arising out of the valuation of [the parties'] net

separate property shall be settled by arbitration" and that "the arbitrator shall have no other authority or jurisdiction other than that of determining the value of the [parties'] net [nonmarital] property."

We review the application of an arbitration clause de novo. *Onvoy, Inc. v. SHAL, LLC*, 669 N.W.2d 344, 349 (Minn. 2003). Whether a party may be compelled to arbitrate depends on the language of the arbitration clause and other related terms. *Id.* "When a party moves to compel arbitration, the [district] court is limited to determining whether an arbitration agreement exists and, if so, whether the dispute falls within the scope of that agreement." *Churchill Env't & Indus. Equity Partners, L.P. v. Ernst & Young, L.L.P.*, 643 N.W.2d 333, 337 (Minn. App. 2002). Unless a district court finds that there is no enforceable agreement to arbitrate, "it shall order the parties to arbitrate." Minn. Stat. §572B.07(a) (2022).

Under the plain language of the antenuptial agreement, "any controversy solely arising out of the valuation of [the parties'] net separate property shall be settled by arbitration," but the arbitrator's authority is limited to "determining the value of [husband's] net separate property and [wife's] net separate property." *See Glacier Park Iron Ore Props., LLC v. U. S. Steel Corp.*, 948 N.W.2d 686, 697 (Minn. App. 2020) (relying on "the plain language of the parties' agreement to arbitrate" to determine which disputes were subject to mandatory arbitration), *aff'd*, 961 N.W.2d 766 (Minn. 2021). Any dispute regarding the valuation of the parties' net nonmarital property must be resolved in arbitration. All other issues are properly determined by the district court.

C.

Husband argues that the district court erred in determining that he dissipated marital assets. Parties to a dissolution owe each other "a fiduciary duty . . . for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets." Minn. Stat. § 518.58, subd. 1a (2022). If the court finds that one party to a marriage improperly "transferred, encumbered, concealed, or disposed of" marital assets during the pendency of the dissolution, the district court shall attribute the dissipated assets to the party who did so. *Id.* The statute establishes a four-part test for determining whether a party inappropriately transferred, encumbered, concealed, or disposed of marital assets: (1) a transfer or disposition of marital assets; (2) without the other party's consent; (3) "in contemplation of commencing, or during the pendency of, the current dissolution . . . proceeding"; and (4) the transfer or disposition was not "in the usual course of business or for the necessities of life." *Id.* The burden of proof is on the party alleging a dissipation. *Id.*

Whether a party has dissipated marital assets is a question of fact. *See* Minn. Stat. § 518.58, subd. 1a ("If the court *finds* . . . ." (emphasis added)). Appellate courts review a district court's factual findings for clear error, viewing the evidence in the light most favorable to the district court's findings and reversing only if the record "requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

The district court found that husband "dissipated a substantial amount of assets prior to, and during, this proceeding." The court found that husband "was not merely spending

money for the necessities of life or to maintain marital property" and that "[d]ue to his unwillingness to be forthcoming about his finances, it is still unclear exactly how he spent down the marital and non-marital properties, with the exception of the exorbitantly expensive bankruptcy proceeding." The district court also found that the value of the estate at the time of the decree was approximately $1.5 million and that husband had been "spending freely" during the proceedings. It ultimately concluded that husband dissipated $2,501,978.

By definition, only marital assets can be dissipated. Minn. Stat. § 518.58, subd. 1a (describing fiduciary duty with reference to only "marital assets"). Yet the district court's dissipation findings refer to "martial and non-marital properties." Any finding of dissipation must be limited to marital property and must exclude the nonmarital property identified in the antenuptial agreement.

D.

Husband argues that the district court erred by awarding wife need-based and conduct-based attorney fees. In a dissolution proceeding, the district court is authorized to award both need- and conduct-based attorney fees. A district court "shall" award need-based attorney fees if it finds that (1) "the fees are necessary for the good faith assertion of the party's rights . . . and will not contribute unnecessarily to the length and expense of the proceeding," (2) the party ordered to pay the fees "has the means to pay them," and (3) the party awarded the fees "does not have the means to pay them." Minn. Stat. § 518.14, subd. 1 (2022). A district court may, "in its discretion," award "additional" conduct-based

attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." *Id.*

Wife sought both types of attorney fees, and the district court found that "a needs-based and a conduct-based award is merited." The court noted that wife did not have significant assets and owed $200,000 in attorney fees "stretching back to 2019." The court found that husband had the means to pay those fees and unreasonably contributed to the length and expense of the proceeding. The court found that husband had "not negotiated in good faith," "decimate[d] the marital and any non-marital estate," "refused to cooperate with discovery," "ignored court orders," "mismanaged his business," and "roped" wife into the bankruptcy proceeding. The court ultimately awarded wife $247,145 in attorney fees.

Under the parties' antenuptial agreement, each party was responsible for their own legal costs to terminate the marriage, "without contribution from the other party." However, if a party challenged the validity of the agreement and did not prevail, that party would be responsible for the defending party's attorney fees. As a general matter, Minnesota upholds principles of freedom of contract, and "parties are generally free to allocate rights, duties, and risks." *Lyon Fin. Servs. v. Ill. Paper & Copier Co.*, 848 N.W.2d 539, 545 (Minn. 2014). "In Minnesota, attorney fees are recoverable if there is a specific contract provision permitting recovery." *Kaeding v. Auleciems*, 886 N.W.2d 658, 666 (Minn. App. 2016). "Courts are not warranted in interfering with the contract rights of parties as evidenced by their writings which purport to express their full agreement." *Cady v. Bush*, 166 N.W.2d 358, 362 (Minn. 1969).

Because the antenuptial agreement governed attorney fees, any award of such fees must be consistent with the terms of the agreement.[5]

II.

Husband contends that the district court erred "in imputing income to [him] consistent with income from a non-operational business and in light of the findings regarding [his] health."

Minn. Stat. § 518A.32, subd. 1 (2022), requires the imputation of income in child-support matters "[i]f a parent is voluntarily unemployed, underemployed, or employed on a less than full-time basis, or there is no direct evidence of any income." "[I]t is rebuttably presumed that a parent can be gainfully employed on a full-time basis." Minn. Stat. § 518A.32, subd. 1. However, "[a] parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that . . . the unemployment, underemployment, or employment on a less than full-time basis is because a parent is physically or mentally incapacitated." *Id.*, subd. 3 (2022).

As to the imputation of income in the spousal-maintenance context, in appropriate circumstances, a district court may estimate an obligor's income. *See LeRoy v. LeRoy*, 600 N.W.2d 729, 733 (Minn. App. 1999) ("A district court may consider past earnings and earning capacity to estimate an obligor's future income."), *rev. denied* (Minn. Dec. 14, 1999); *see also Fulmer v. Fulmer*, 594 N.W.2d 210, 213 (Minn. App. 1999) ("[District] courts may use earning capacity to measure income if it is either impracticable to determine

[5] Issues, if any, regarding application of the antenuptial provisions governing attorney fees may be raised and decided in the district court on remand.

an obligor's actual income or the obligor's income is unjustifiably self-limited."). A district court may also impute income to an obligor if it finds the obligor has acted in bad faith in limiting his income. *Melius v. Melius*, 765 N.W.2d 411, 416 (Minn. App. 2009); *but see Passolt v. Passolt*, 804 N.W.2d 18, 19, 24 (Minn. App. 2011) (stating that a district court "may consider a maintenance recipient's prospective ability to become fully or partially self-supporting without making a finding that the recipient has acted in bad faith to remain unemployed or underemployed"), *rev. denied* (Minn. Nov. 15, 2011).

Whether to impute income to child-support and maintenance obligors is discretionary. *See Putz v. Putz*, 645 N.W.2d 343, 353 (Minn. 2002) (concluding that the child-support magistrate abused his discretion by failing to impute income); *Walker v. Walker*, 553 N.W.2d 90, 97 (Minn. App. 1996) (noting that the district court did not abuse its discretion by imputing income in maintenance context).

The district court determined that husband was voluntarily unemployed and imputed an income of $30,000 a month to husband for purposes of calculating child-support and spousal maintenance, noting that in husband's affidavit, he said he was trying to restart a business and that husband's actions caused the "liquidation" of Tiger Oak and Lazzari. The district court found that husband was fired from Tiger Oak by the bankruptcy creditors and trustee and that his loss of employment was "his own doing." Husband argues that the district court's own findings show that he was not voluntarily unemployed and that those findings instead show that he was in poor health and physically incapacitated. We agree.

The district court made detailed findings regarding husband's significant health problems and relied on those findings to determine that it was not safe for the children to be in husband's custody. The district court found as follows:

> [Husband] is in poor health. He has radiation fibrosis affecting his throat, causing him to aspirate when he eats. Doctors have recommended a tracheotomy and a feeding tube to prolong his life, but [he] has continually resisted and has no plans to follow the doctors' advice. [Husband] also suffers from hearing loss, vision impairment, headaches, frequent pneumonia, collapsing of his legs and difficulty walking. The children have witnessed him falling over because he is unable to walk, falling asleep at the dinner table, and being unable to breathe. [He] often neglects to properly wear his hearing aids so the children have a difficult time communicating with him when they are in his care.
>
> In February of 2023, the children noticed [husband] struggling to breathe and walk. They became frightened, called [wife], and begged her to take [him] to the hospital. During the hospital visit, doctors recommended that [he] consider hospice care.
>
> The children have witnessed [husband] coughing into the sink in the middle of the night. The children have witnessed [him] struggling to breathe, which has happened at least one time while [he] was driving [OB] in the car. The [c]ourt finds that due to [his] health concerns, and his apparent aversion to following recommendations from doctors, the children are in physical danger when in [his] care for an extended period of time.
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> . . . .
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> [Husband's] physical health has negatively impacted his ability to parent the children. [He] has spells of not being able to breathe. This has happened in the presence of both children, and [wife] testified that it happened when [he] was driving [OB] in his car. . . . At other times [he] struggles to walk and has passed out at the dinner table and in other places. A separate incident happened where [he] passed out while [he] was alone with [OB] on vacation in Texas. This event was

> frightening for [OB]. He begged [his father] to go to the hospital, but he refused.
>
> [Husband's] physical health impacts his ability to be an effective parent and also creates significant safety concerns during his parenting time. [He] suffers from hearing loss and refuses to consistently wear his hearing aids. . . . [He] has a difficult time hearing the children, and becomes angry when he misunderstands them. The difficulty in communication is one thing, but [his] refusal to mitigate the issue or work on his communication with the children is concerning. [His] difficulty breathing is frightening for the children and has led them to believe he was going to die on multiple occasions. The children have begged [him] to take better care of himself, and [he] refuses. It is not in the children's best interests to be in a "care taker" position with their father, especially when [he] refuses to take steps to maintain his health as recommended by his doctors.
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> . . . .
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> *First*, [husband's] physical health is so poor that he may not be physically equipped to continue caring for the children, especially considering [EB's] unique needs. Because [he] chooses not to follow the advice of his doctors, there is a very real possibility that [his] health will continue to worsen. It is not in the children's interests to be placed in the role of caregivers to [him].
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> . . . .
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> The [c]ourt finds it would be harmful to the children's wellbeing and development to spend substantial time with [their father], given [his] unaddressed anger and health. The [c]ourt finds this factor weighs in favor of [wife's] request for sole legal and physical custody, as well as for a limited parenting time schedule for [husband].

The district court's findings regarding husband's poor health are inconsistent with its imputation of income based on voluntary unemployment. A district court abuses its discretion if its decision "is against logic and the facts on record." *Rutten v. Rutten*, 347

N.W.2d 47, 50 (Minn. 1984). On this record, the district court's imputation of income of $30,000 a month to husband was against logic and the facts found by the district court. And that error affected the district court's calculation of spousal maintenance and child support.

III.

Husband argues that the district court erred in calculating his child-support obligation because the district court failed to consider wife's spousal-maintenance award.

To determine the presumptive child-support obligation of one parent to another, the court must "determine the gross income of each parent under section 518A.29." Minn. Stat. § 518A.34 (2022). Under Minn. Stat. § 518A.29(a) (2022), income "includes any form of periodic payment to an individual, including, but not limited to . . . spousal maintenance received under a previous order or the current proceeding." And under Minn. Stat. § 518A.29(g) (2022), "Spousal maintenance payments ordered by a court . . . to the other party as part of the current proceeding are deducted from other periodic payments received by a party for purposes of determining gross income."

An award of child support rests within the broad discretion of the district court. *Rutten*, 347 N.W.2d at 50. "There must be a clearly erroneous conclusion that is against logic and the facts on record before this court will find that the [district] court abused its discretion." *Id.*

The district court ordered husband to pay $2,369 per month in child support. In determining husband's child-support obligation, the district court used a monthly income of $2,000 for wife, despite separately finding that she had a monthly income of $3,200,

reasoning that her "distributions" were "not guaranteed." The district court also awarded wife $8,000 per month in spousal maintenance.

Husband argues that the district court should have included his $8,000 per month spousal-maintenance obligation in wife's income when calculating child support. He further argues that there is no support for the district court's finding that wife earns only $2,000 per month for purposes of child-support calculations because the district court specifically found that wife had a monthly income of $3,200 per month from her employment.

Wife argues that this issue is not properly before us because husband has raised it for the first time on appeal. But the issue of child support was raised and determined by the district court. And in an appeal from a trial in which no posttrial motion was made, as is the case here, we must determine whether the record supports the findings of fact and whether those facts support the legal conclusions, and we review substantive questions of law that were properly raised during trial. *Alpha Real Est. Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 308-311 (Minn. 2003). The application of a statute to undisputed facts is an issue of law reviewed de novo. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007). Because the issue of child support was properly raised and decided by the district court in the underlying document trial, the legal issue of whether the district court properly applied the relevant statute in calculating support is properly before us.

In *Haefele v. Haefele*, the supreme court stated, "Although we have had few occasions to interpret section 518A.29(a), we have suggested that the [l]egislature's use of

the term 'payment' in this section generally means that a benefit must be actually received by the parent, as opposed to merely vested or owed, in order to constitute income." 837 N.W.2d 703, 710 (Minn. 2013). Under that reasoning, we cannot say that the district court erred by not including spousal-maintenance payments ordered, but not yet received by wife, when calculating her income for purposes of child support.

However, we have concluded that the district court erred in imputing income of $30,000 a month to husband, which affected its child-support determination. Moreover, the district court did not adequately explain its two separate findings on the amount of wife's monthly income: $2,000 and $3,200. Under the circumstances, the child-support determination cannot stand.

IV.

Husband contends that the district court erred in its custody and parenting-time determinations.

Minn. Stat. § 518.17 (2022) governs a determination of child custody and requires the district court to evaluate the best interests of the child. Minn. Stat. § 518.17, subd. 1. In doing so, a district court "must consider and evaluate all relevant factors," including 12 statutory factors. *Id.*, subd. 1(a)(1)-(12). When considering the statutory best-interests factors, a district court "must make detailed findings on each of the factors . . . based on the evidence presented and explain how each factor led to its conclusions and to the determination of custody and parenting time." *Id.*, subd. 1(b)(1). This court applies a clear-error standard of review to a district court's findings on factual issues relevant to a custody decision and an abuse-of-discretion standard of review to the district court's ultimate

custody decision. *Pikula*, 374 N.W.2d at 710; *Schallinger v. Schallinger*, 699 N.W.2d 15, 19 (Minn. App. 2005), *rev. denied* (Minn. Sept. 28, 2005).

A district court has broad discretion to provide for the custody of the parties' children. *Rutten*, 347 N.W.2d at 50. 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." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985).

Wife sought sole legal and sole physical custody of the children, with husband's parenting time to occur only on Saturdays. Husband sought joint legal and joint physical custody with equal parenting time. The court awarded wife sole legal and physical custody of the children and limited husband's parenting time to every Saturday from 10:00 a.m. to 5:00 p.m.

Husband challenges two aspects of the district court's custody and parenting-time determinations. First, he argues that the district court erred by finding that his ability to care for the children was compromised by his health conditions and by relying on that fact in its best-interests analysis. Second, he argues that the district court erred in finding that he engaged in domestic abuse against wife and that because there was no abuse, the district court should have applied a rebuttable presumption that joint legal custody was in the children's best interests.

A.

Husband argues that the district court erred by finding that his health put his children at risk. In addressing the best-interests factors, the district court essentially found that

husband was in very poor health and reasoned that his health compromised the safety and wellbeing of the children and his ability to parent.

Husband does not argue that the district court's findings regarding his health are erroneous. Indeed, he relies on those findings to assign error to the district court's income imputation. Several of those findings reveal instances in which the children were with husband, but he was not able to properly care for them as a result of his declining physical health. For example, the district court found that the children witnessed husband unable to breathe, including while driving. The district court also found that husband had "passed out at the dinner table and in other places." We discern no error in the district court's finding that husband's poor physical health compromised the safety and wellbeing of the children when in his care for prolonged periods of time.

B.

Husband argues that the district court erred in finding that he engaged in domestic abuse. Under Minn. Stat. § 518.17, subd. 1(b)(9), the district court must use a rebuttable presumption that upon the request of either parent, "joint legal custody is in the best interests of the child." However, the district court

> shall use a rebuttable presumption that joint legal custody or joint physical custody is not in the best interests of the child if domestic abuse, as defined in section 518B.01, has occurred between the parents. In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs. Disagreement alone over whether to grant sole or joint custody does not constitute an inability of parents to cooperate in the rearing of their children as referenced in paragraph (a), clause (12).

Minn. Stat. § 518.17, subd. 1(b)(9).

Husband argues that because there was no abuse, the district court should have applied the rebuttable presumption that joint legal custody was in the children's best interests.

In granting wife sole legal and physical custody, the district court found, in part, as follows:

> The [c]ourt finds that [husband] has domestically abused [wife] within the meaning defined in Minn. Stat. [§] 518B.01. [Husband] has made [wife] fearful for her physical safety. [Husband] is easily angered and has a very unpredictable temper. [Wife] testified credibly that [husband] has thrown objects and slammed counters when he is angry. The [c]ourt finds that [wife] could reasonably have been afraid for her physical safety when [husband] has yelled and threatened her.

Husband points to Minn. Stat. § 518B.01, subd. 17 (2022), and seems to suggest, without citation to authority, that there must be a previous finding of domestic abuse in an order-for-protection (OFP) proceeding to support a finding of abuse in a dissolution proceeding. In his brief to this court, he writes, "The [district] court's finding of domestic abuse is not supported by the record before it given there was no OFP and no such findings of abuse." *See* Minn. Stat. § 518B.01, subd. 17 ("In a subsequent custody proceeding the court must consider a finding in a proceeding under this chapter or under a similar law of another state that domestic abuse has occurred between the parties.").

Again, husband cites no authority indicating there must be a finding of domestic abuse in an OFP proceeding before a district court can make a finding of domestic abuse in a custody proceeding. And the plain language of section 518.17, subdivision 1(b)(9),

does not require a prior OFP or finding of abuse in a prior domestic-abuse proceeding. The statute merely requires a determination that domestic abuse, as defined in section 518B.01, has occurred. This court generally will not read words into a statute. *See Browder v. State*, 899 N.W.2d 525, 529 (Minn. App. 2017) ("We do not read words into a statute on the supposition that they have been inadvertently overlooked."), *rev. denied* (Minn. Aug. 22, 2017). We therefore reject husband's argument on this point.

Husband also argues that the district court's domestic-abuse findings are not supported by the record. Under Minn. Stat. § 518B.01, subd. 2(a)(2) (2022), domestic abuse includes "the infliction of fear of imminent physical harm, bodily injury, or assault" upon a family member.

In an affidavit to the district court, wife asserted:

> [Husband] has emotionally abused both me and the children. He has, at times, gotten physical as well. He throws things when angry, slams things down, and attempts to physically intimidate us. [Husband's] anger escalates so easily and becomes so intense that I have been afraid for my safety, as well as for the safety of the children. He has acted like he was going to hit me, and them, on multiple occasions.

The district court found that husband "is easily angered and has a very unpredictable temper," and that wife "testified credibly" that husband "has thrown objects and slammed counters when he is angry." The district court therefore determined that wife "could reasonably have been afraid for her physical safety." We question whether the district court's findings that husband is "easily angered," has an "unpredictable temper," and has "thrown objects and slammed counters when he is angry" alone would support a finding of domestic abuse as defined under statute. Nonetheless, given wife's assertion that

husband had "acted like he was going to hit [her]," we are satisfied that the record supports a finding of domestic abuse.

Moreover, even if the district court had not found domestic abuse and had applied the rebuttable presumption in favor of joint legal custody, that presumption would likely have been rebutted because in addition to the uncontested findings regarding husband's significant health issues, the district court found that *every* best-interests factor favored an award of sole legal and sole physical custody to wife.

In conclusion, we affirm the district court's legal-custody, physical-custody, and parenting-time determinations. But we reverse the district court's determination that the parties' antenuptial agreement was invalid, as well the following determinations that were affected by that error: the identification of nonmarital and marital property, the net valuation of nonmarital property, the dissipation of marital assets, and the attorney-fee award. Those issues are remanded for reconsideration under the terms of the antenuptial agreement. We also reverse the district court's imputation of income in the amount of $30,000 a month to husband, as well as its related spousal-maintenance and child-support determinations, and we remand those issues for reconsideration consistent with this opinion. Whether to reopen the record on remand is in the district court's discretion.

Affirmed in part, reversed in part, and remanded.