STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0627

In Re the Marriage of:

Mark O. Onyenemezu, petitioner,
Appellant,

vs.

Faith Chioma Onyenemezu,
Respondent.

Filed February 18, 2025
Affirmed
Reilly, Judge[*]

Anoka County District Court
File No. 02-FA-21-1594

Mark O. Onyenemezu, Columbia Heights, Minnesota (pro se appellant)

Eric Anumobi, Eric Bond Law Office, PLLC, West St. Paul, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Worke, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Following the entry of a judgment and decree dissolving the parties' marriage, appellant argues that the district court abused its discretion by denying his several

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

postdissolution motions. We conclude that only appellant's challenges to the district court's denial of his motion to modify custody and parenting time and to appoint a reunification therapist and parenting-time expeditor (PTE) are properly before us. Thus, we limit our review to those arguments. Because we discern no abuse of discretion, we affirm.

FACTS

On August 3, 2023, the district court dissolved appellant Mark O. Onyenemezu and respondent Faith Chioma Onyenemezu's marriage.[1] The judgment and decree of dissolution (J&D) granted Faith sole legal and sole physical custody of their joint minor child; awarded Mark parenting time every other weekend; appointed a PTE; awarded an unmortgaged home on Summit Avenue to Mark and a mortgaged home on Fifth Street to Faith; and divided the parties' remaining marital property.

On October 2, 2023, Mark appealed the J&D (No. A23-1470). He then filed a motion in this court claiming that his appeal was premature because there were posttrial motions to be heard on December 11, 2023, in district court. Mark had not yet filed any posttrial motions, but he had filed a written letter requesting permission to move for reconsideration of the J&D. In an order dated October 30, 2023, we accepted jurisdiction over Mark's appeal, concluding that his request for reconsideration did not toll the time for appeal and that the appeal was therefore not premature. *Onyenemezu v. Onyenemezu*, No. A23-1470 (Minn. App. Oct. 30, 2023) (order).

[1] Because the parties share the same last name, we refer to them by their first names.

On November 20, 2023, while his appeal of the J&D was pending, Mark filed three posttrial motions in district court. The first motion appears to ask the district court for amended findings or a new trial, to modify parenting time, and to appoint a reunification therapist. In his second motion, Mark asked the district court to modify child support. And in his third motion, Mark asked the district court to reconsider child custody, reopen the J&D, and correct a mistake in a trial exhibit.

Alongside the motions, Mark filed affidavits and exhibits spanning hundreds of pages, including tax documents for himself and his business, home insurance statements, health records, photographs, screenshots of text messages between himself and Faith, and a travel advisory that the United States Department of State issued for Nigeria.

The district court held a hearing on the postdecree motions. On February 23, 2024, the district court filed an order granting in part and denying in part Mark's motions. The district court amended the J&D to (1) adjust the valuation of the Fifth Street property from $280,000 to $320,000; (2) omit a finding that the Fifth Street property was refinanced in 2006; and (3) correct a clerical error to clarify that the Fifth Street property was refinanced in 2012. The district court denied Mark's remaining requests in full.

On April 19, 2024, Mark appealed the February 23, 2024, order (No. A24-0627). He then requested that we consolidate his appeals from the order and the J&D. We declined his consolidation request because appeals from a J&D and postdecree motions "involve distinct issues" and are resolved under different standards. Mark then filed a notice of voluntary dismissal in his appeal from the J&D (No. A23-1470), and we dismissed his appeal. *Onyenemezu v. Onyenemezu*, No. A23-1470 (Minn. App. July 12, 2024) (order).

When we denied his consolidation request, we clarified that the present appeal is taken only from the February 23, 2024, order.

DECISION

I. The only issues properly before this court are the appeals from the order denying Mark's motions to modify custody and parenting time and to appoint a reunification therapist and PTE.

A. The prior appeal (A23-1470)

Mark appealed the dissolution judgment (A23-1470) but later voluntarily dismissed that appeal. Thus, Mark's appeal of the dissolution judgment is not properly before this court in his current appeal from the district court's February 23, 2024, order addressing his posttrial motions.

Nor can Mark's current appeal from the February 23, 2024, order be construed to include a challenge to the dissolution judgment. Specifically, an appeal from a judgment must be taken within 60 days after the judgment is entered. Minn. R. Civ. App. P. 104.01, subd. 1. That 60-day window is tolled "if any party serves and files a proper and timely motion" of a type listed in Minn. R. Civ. App. P. 104.01, subd. 2. Motions listed in Minn. R. Civ. App. P. 104.01, subd. 2 that toll an appeal period include motions for a new trial and motions for amended findings of fact. To be timely, a motion for a new trial must be "served within 30 days of service of notice by a party of the filing of the decision." Minn. R. Civ. P. 59.03. The same is true for a motion for amended findings. Minn. R. Civ. P. 52.02. Here, on August 3, 2024, (a) the district court filed its order for (the dissolution) judgment; (b) the district court administrator entered judgment on that order; (c) the district court administrator provided a notice of filing of the district court's order for judgment,

and a notice of the entry of that judgment; and (d) Faith's attorney served the district court administrator's notice of filing of the order and notice of entry of the judgment on Mark. Mark, however, did not serve his motion for a new trial or amended findings until November 2023; more than 30 days after Faith's attorney served the notice of filing and notice of entry in August 2023. Thus, Mark's motion did not toll the time to appeal the judgment. As a result, the time to appeal that judgment expired in October 2023, and Mark's current appeal—taken in April 2024 from the district court's February 23, 2024, order addressing his posttrial motion—cannot be construed to include a challenge to the judgment.[2]

B. The current appeal (A24-0627)

The district court's February 23, 2024, order addressed Mark's posttrial motions. Because Mark appealed that order within 60 days of Faith's attorney serving written notice of filing of the order, Mark's appeal of that order is timely. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (noting that, subject to the tolling allowed by timely and proper motions of the types listed in Minn. R. Civ. App. P. 104.01, subd. 2, the time to appeal an order is 60 days from service by a party of written notice of filing of that order). The district court's

[2] Because Mark's challenges to the dissolution judgment are not properly before us, we do not address his arguments alleging errors in that judgment. Those arguments include that (1) the distribution of the parties' marital property was inequitable; (2) the district court erred in calculating the parties' respective marital and non-marital equity in the Fifth Street property; and (3) the district court abused its discretion when it valued the parties' properties by crediting Faith for improvements to the Fifth Street property and declining to assign a value to any capital improvement costs or award equity appreciation in the unmortgaged house.

February 23, 2024, order addressed Mark's requests for amended findings or a new trial, to reopen the judgment, and his motions to modify custody and parenting time.

An order denying a motion for a new trial is appealable. Minn. R. Civ. App. P. 103.03(d). A district court's decision about whether to grant a new trial, as well as its decision regarding whether to grant a motion for amended findings of fact, is reviewed for an abuse of discretion. *Larson v. Gannett Co., Inc.*, 940 N.W.2d 120, 131 (Minn. 2020) (new trial); *State by Fort Snelling State Park Ass'n v. Minneapolis Park & Recreation Bd.,* 673 N.W.2d 169, 177-78 (Minn. App. 2003) (amended findings), *rev. denied* (Minn. Mar. 16, 2004). The time limits for moving a district court for a new trial, as well as for amended findings of fact, are "absolute." *Ring v. McPeek*, 423 N.W.2d 711, 712 (Minn. App. 1988). As noted above, Mark's motions for a new trial and for amended findings of fact were untimely. The district court cannot abuse its discretion by denying motions Mark made beyond the "absolute" limit for making those motions. And Mark is not seeking review of the district court's rulings partially granting his motion for amended findings. Thus, we need not address these matters.

Generally, an order denying a motion to reopen a prior ruling is not appealable. *Carlson v. Panuska*, 555 N.W.2d 745, 746 (Minn. 1996) (addressing appealability of orders denying motions to reopen prior rulings); *Angelos v. Angelos*, 367 N.W.2d 518, 519 (Minn. 1985) (same); *Fink v. Shutt*, 445 N.W.2d 869, 870 (Minn. App. 1989) (same). Mark makes no argument—and the record does not otherwise show—that an exception to this general rule applies here. *See Carlson*, 555 N.W.2d at 746 (identifying certain exceptions to the general rule that orders denying motions to reopen prior rulings are not appealable). Thus,

the district court's order denying Mark's motion to reopen the judgment is not properly before us.[3]

An order denying a motion to modify a custody provision in an existing judgment is appealable, as are orders denying motions to modify parenting time. *See* Minn. R. Civ. App. P. 103.03(h). Thus, the only matters we need to substantively address in Mark's current appeal are his challenges to the district court's denial of his motions to modify the custody and parenting-time provisions of the judgment.

II. The district court did not abuse its discretion in denying the motions that are properly before this court.

A reviewing court "cannot assume a district court erred by failing to address a motion." *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 177-78 (Minn. App. 2009), *rev. denied* (Minn. Jan. 27, 2010) (citing *Loth v. Loth*, 35 N.W.2d 542, 546 (1949)). Rather, "silence on a motion is . . . treated as an implicit denial of the motion." *Id.* at 178. Moreover, appellants must show that they are prejudiced by the alleged error to obtain appellate relief. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *see also Goldman v. Greenwood*, 748 N.W.2d 279, 285 (Minn. 2008) (declining to reverse denial of custody-modification motion because district court correctly concluded there was no prima facie case and was thus harmless error) (citing Minn. R. Civ. P. 61).

[3] Although the issue is not properly before us, the district court's denial of the motion to reopen the judgment was supported by the record.

The district court's order did not separately address each aspect of these motions, but it expressly denied "[a]ll other motions not otherwise addressed" in its order. We turn now to the issues properly before us—the district court's denial of Mark's motions to modify custody and parenting time and to appoint a PTE and reunification therapist.

A. Motion to Modify Custody and Parenting Time

First, Mark challenges the district court's summary denial of his motion to modify custody and award him additional parenting time.

Appellate courts review a district court's decision to deny a motion to modify custody without an evidentiary hearing for an abuse of discretion. *See Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (addressing the standard of review for decision on modification of custody under Minnesota Statutes section 518.18(d) (2020)). A district court may review a motion to modify custody without an evidentiary hearing if the movant does not "[make] a prima facie case by alleging facts that, if true, would provide sufficient grounds for modification." *Id.* at 507. Allegations that are merely conclusory, "too vague to support a finding," or not "supported by any specific, credible evidence" are insufficient. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (quotations omitted). Appellate courts review a district court's decision to deny a motion to modify custody without an evidentiary hearing under an abuse-of-discretion standard. *See Woolsey*, 975 N.W.2d at 506.

Generally, a "motion to modify a custody order" may not be made earlier than one year after the date of entry of a J&D dealing with custody. Minn. Stat. § 518.18(a) (2024). Exceptions exist when the parties agree to the modification in writing, "the court finds that there is persistent and willful denial or interference with parenting time," or the court "has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development." *Id.* (c) (2024).

The district court denied Mark's modification motion because the J&D was entered less than one year before the modification motion was made, and the parties had not agreed to the modification in writing. In denying the motion, the district court implicitly ruled that Mark did not establish a prima facie case that an exception to the one-year bar applied; he did not adequately allege endangerment or denial or interference with parenting time. *Id.* That said, Mark alleges that he satisfied the exception to the one-year rule because he "has not been with his child since [December 4, 2021]" and because the State Department issued a travel advisory for Nigeria, a place that Faith expressed interest in visiting with the parties' child.

Although Mark alleged that he has not seen the minor child since 2021, he did not allege facts showing that Faith persistently and willfully interfered with his parenting time. *See* Minn. Stat. § 518.18(c). Nor did Mark allege facts showing that the risk of travelling to Nigeria would endanger his child's health or emotional development, especially when Faith merely expressed a potential interest in travelling to Nigeria with the parties' child. To the extent that Faith has made no actual plans to travel to Nigeria with the parties' child, and has taken no concrete steps towards doing so, Mark's allegation is purely speculative.

Based on the record, we conclude that the district court did not abuse its discretion by ruling that these allegations did not establish a prima facie case to overcome the one-year bar to custody and parenting plan modifications.[4]

B. Motion to Appoint a PTE and Reunification Therapist

Mark also challenges the district court's failure to appoint a PTE and denial of his motion to appoint a reunification therapist.

"Upon request of either party, the parties' stipulation, or upon the court's own motion, the court *may* appoint a [PTE] to resolve parenting-time disputes that occur under a parenting-time order while a matter is pending . . . or after a decree is entered." Minn. Stat. § 518.1751, subd. 1 (2024) (emphasis added). The statute permits, but does not require, courts to appoint PTEs. *Compare* Minn. Stat. § 645.44, subd. 15 (2024) ("'May' is permissive."), *with* Minn. Stat. § 645.44, subd. 16 (2024) ("'Shall' is mandatory."). Here, there is no dispute that the district court appointed a PTE. Mark concedes in his brief that

[4] We acknowledge that the district court applied the custody-modification standard, Minn. Stat. § 518.18, to Mark's parenting-time motion, instead of the parenting-time modification standard laid out in Minn. Stat. § 518.175, subd 5 (2024). This may have been erroneous. *But see Christensen v. Healey*, 913 N.W.2d 437, 441-42 (Minn. 2018) (establishing that a substantial parenting-time modification may be a de facto custody modification). But our review of this record shows that remanding for the district court to readdress parenting-time modification would not produce a different result. Therefore, here, we decline to remand on that basis. *See Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985) (declining to remand a custody-modification determination for further findings when "on remand the [district] court would undoubtedly make findings that comport with the statutory language" and reach the same result); Minn. R. Civ. P. 61 (requiring courts to ignore harmless error); *see also Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (discussing Minn. Stat. § 518.17, subd. 1 (2018) and noting that "a district court needs great leeway in making a custody decision that serves a child's best interests, in light of each child's unique family circumstance"); Minn. Stat. § 518.003, subd. 3(f) (2024) (noting that a "custody determination" includes a ruling regarding parenting time).

the district court did so but notes that the parties "never utilized [the appointed PTE]" and currently do not have one. But again, there is no requirement that a court appoint a PTE or that the parties are entitled to a PTE throughout the proceedings. We discern no abuse of discretion by the district court.

Similarly, we reject Mark's argument that the district court abused its discretion by failing to appoint a reunification therapist. While courts may appoint reunification therapists, *see, e.g.*, *Medvedovski v. Medvedovski*, 903 N.W.2d 646, 648 n.1 (Minn. App. 2017), there is no legal or statutory requirement that the district court must do so, and Mark does not direct this court to any authority stating otherwise. That Faith has declined to participate in reunification therapy, as Mark points out, is irrelevant to whether the district court abused its discretion in denying his motion to appoint a PTE and a reunification therapist.

III. Mark is not entitled to appellate relief on his inadequately briefed arguments.

Finally, Mark's brief contains other arguments that are inadequately briefed or lack a legal basis. For example, Mark argues that the district court was "hostile" and "overly aggressive" and directed "sarcasm," "admonishments," and "frustrations" towards him, and "presumes that the court penalized him for his behavior/attitude by awarding [Faith]" certain property. But he does not cite any pertinent legal authority, nor does he explain how the district court "unlawfully prejudiced" him in the proceedings based for the reasons he discussed. We decline to address such arguments. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an

inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in family-law appeal). Therefore, we affirm.

Affirmed.