This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0468

In re the Marriage of:
Oluwafunbi Ige Olusina, petitioner,
Appellant,

vs.

Ann Oludolapo Olusina,
Respondent.

Filed January 13, 2025
Affirmed; motions denied
Worke, Judge

Scott County District Court
File No. 70-FA-20-8916

Christopher E. Brevik, St. Michael, Minnesota (for appellant)

Ann Oludolapo Olusina, Carver, Minnesota (pro se respondent)

Considered and decided by Worke, Presiding Judge; Bentley, Judge; and Smith, John P., Judge.*

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court (1) abused its discretion by awarding respondent sole legal custody of the parties' child, (2) clearly erred by valuing the marital

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

property, and (3) abused its discretion by awarding respondent conduct-based attorney fees. Both parties move this court for attorney fees and appellant moves to strike respondent's brief. We affirm the district court's order and deny the parties' motions.

FACTS

Appellant-father Oluwafunbi Ige Olusina and respondent-mother Ann Oludolapo Olusina were married in 2012 and their joint child was born in 2018. Father filed a petition for dissolution of marriage in July 2020, seeking joint legal and joint physical custody of the child.

In August 2020, the parties attended an Initial Case Management Conference (ICMC) and were ordered to participate in early neutral evaluations and begin informal discovery. In the 22 months that followed, the parties repeatedly accused each other of misconduct and discovery violations and sought court intervention for custody and parenting-time disputes.

In June 2022, the district court held a three-day trial but suspended proceedings when both parties asserted that the other had failed to disclose recent tax filings, and father asserted that mother had purchased real property in Nigeria, and had failed to report employment income.

The district court determined that it lacked the judicial resources to continue monitoring the parties' compliance with orders and appointed a special master to oversee the remainder of the discovery process. The district court continued trial until the special master determined that discovery was complete.

After its review, the special master concluded that mother did not purchase real property in Nigeria, that any marital funds purportedly used to purchase real property in Nigeria had been accounted for, and that "[w]ith very minor exception[s], all of the documents, information, and positions were known and disclosed between the parties before the trial was interrupted." The special master further determined that father unreasonably contributed to the length and expense of the proceedings by making multiple discovery requests for previously furnished information, filing numerous objections in contravention of district court orders, and persisting in his claim that mother used marital assets to purchase real property in Nigeria.

The district court entered its judgment and decree on August 1, 2023, in which it awarded joint physical custody of the child to mother and father, sole legal custody to mother, apportioned the parties' marital assets and debt, and awarded mother $75,000 in conduct-based attorney fees. This appeal followed.

DECISION

Custody

Rebuttable presumption of joint legal custody

Father argues that there was insufficient evidence to overcome the statutory presumption that joint legal custody is in the best interests of the child.

"Appellate review of custody determinations is limited to whether the [district] court abused its discretion." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). "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."

Woolsey v. Woolsey, 975 N.W.2d 502, 506 (Minn. 2022). We review a district court's findings of fact for clear error and reverse only when left "with the definite and firm conviction that a mistake has been made." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019).

The clear-error standard of review "is a review of the record to confirm that evidence exists to support the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021). "When the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *Id.* at 223 (quotation omitted). When applying the clear-error standard of review, appellate courts (1) view the evidence in the light most favorable to the findings; (2) do not reweigh the evidence; (3) do not find their own facts; and (4) do not reconcile conflicting evidence. *Id.* at 221-22. Thus,

> an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the factfinder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Id. at 222 (quotations omitted); *see Bayer v. Bayer*, 979 N.W.2d 507, 513 (Minn. App. 2022) (citing *Kenney* in family-law appeal); *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (discussing clear-error standard of review); *cf. McDonald v. McDonald*, No. A22-1421, 2023 WL 8361312, at *2 (Minn. App. Dec. 4, 2023) (using this language) (Worke, J.).

In deciding a custody dispute, the child's best interests are a district court's "paramount commitment." *Olson v. Olson*, 534 N.W.2d 547, 549 (Minn. 1995). To determine the best interests of the child, the district court must consider all relevant factors and 12 statutory factors. Minn. Stat. § 518.17, subd. 1(a) (2022). "The court shall use a rebuttable presumption that upon request of either or both parties, joint legal custody is in the best interests of the child." *Id*., subd. 1(b)(9) (2022). But "[j]oint legal custody should be granted only whe[n] the parents can cooperatively deal with parenting decisions." *Estby v. Estby*, 371 N.W.2d 647, 649 (Minn. App. 1985). "When evidence shows that parties to a dissolution are completely unable to communicate and cooperate, joint legal custody is not appropriate." *Zander v. Zander*, 720 N.W.2d 360, 368 (Minn. App. 2006), *rev. denied* (Minn. Nov. 14, 2006).

Here, the district court made detailed findings on the 12 best-interest factors. The district court concluded that factors (1) – (8) and (11) were neutral, and that factors (9) and (10) favored father's proposed parenting-time schedule. The district court found that "[t]he child is physically well-provided for in each of the parties' homes," and that "[b]oth parents have shown a willingness to provide care for their child and to meet her needs."

The district court's decision to grant mother sole legal custody turned on factor (12). That factor instructs the court to consider "the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child." Minn. Stat. § 518.17, subd. 1(a)(12). The district court stated that it had "grave concerns for the parties' ability to

cooperate on any issue," citing examples from the record that demonstrated the parties' "absolute inability to cooperate with each other and a failure to even discuss matters regarding their child without discord and hostility."

The district court determined that it was in the best interests of the child to award sole legal custody to one parent "so that the important decisions in the child's life can be made without extensive disputes and further litigation." Ultimately, the district court awarded mother sole legal custody because she had "shown a slightly better ability, on at least some occasions, to rise above the conflict with [father] and act in [child]'s best interests." Because we conclude that the record supports the district court's well-reasoned sole-custody award, we affirm. *See In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021) (affirming that appellate courts need not provide extended discussion of the evidence to demonstrate district court's findings are correct). Moreover, the inability of these parties to cooperate weighs against joint legal custody. *See Ozenna v. Parmelee*, 407 N.W.2d 428, 433 (Minn. App. 1987) (stating that joint legal custody "is not to be used as a legal baseball bat to coerce cooperation." (citation and quotation marks omitted)).

Notice of intent to seek legal custody

Father also claims that the district court abused its discretion by allowing mother to seek sole legal custody without timely filing a counterpetition. Father does not contend that mother was required to file a counterpetition. Rather, he argues that without a

counterpetition, "there would not be fair notice to an adverse party as to what was being requested for as relief at trial."

But the record shows that father had fair notice because he knew or should have known that mother intended to seek sole legal custody. The record amply demonstrates each party's attempt to disparage the other in their custody dispute. Additionally, two months before trial, mother expressly rebuffed father's request to agree to joint custody. Finally, mother declared her intent to seek sole legal custody in the pretrial brief she filed nine months before the trial concluded. We discern no abuse of discretion.

Property valuation

Father challenges the district court's valuation of the marital property, arguing that the district court applied inconsistent valuation dates.

Under Minn. Stat. § 518.58, subd. 1 (2022), "[t]he [district] court shall value marital assets . . . as of the day of the initially scheduled prehearing settlement conference, unless a different date is agreed upon by the parties, or unless the court makes specific findings that another date of valuation is fair and equitable." By standing order in the county where father's petition was filed, the valuation date of a dissolution "shall be the date of the first scheduled ICMC." We review a district court's determination of the marital property valuation date for an abuse of discretion. *Grigsby v. Grigsby*, 648 N.W.2d 716, 720 (Minn. App. 2002), *rev. denied* (Minn. Oct. 15, 2002).

Father's argument is premised primarily on his incorrect assertion that the district court "used August 31, 2020, or dates closest in time to August 31, 2020," as the valuation date. But the record shows that the district court valued each asset based on the account

statements the parties provided, and that the district court simply used whichever statement was dated closest in time to the August 11, 2020, valuation date (the date of the parties' first ICMC). In valuing father's MoneyGram 401(k) account, for example, the district court used the value described on a June 30 statement because that statement was the "closest statement provided to valuation date." In valuing mother's investment account, the district court used the beginning balance of July 31, rather than the ending balance of August 31, because July 31 was "closer to valuation date." It appears that father simply misunderstands how the district court determined value based on the valuation date.

Father next argues that the district court did not apply the valuation date consistently. He specifically challenges the valuation of mother's investment accounts, insisting that the district court should have used an August 31 valuation date because it used that date to value the other accounts. This argument fails because the district court did *not* use August 31 to value the other accounts.

We discern no abuse of discretion in the district court's valuations.

Debt apportionment

Father also argues that the district court abused its discretion by not apportioning $13,500 in credit-card debt held in his name. "A [district] court has broad discretion in the apportionment of debts in a dissolution proceeding and will be reversed only upon a clear showing of an abuse of that discretion." *Jones v. Jones*, 402 N.W.2d 146, 149 (Minn. App. 1987).

In its factual findings, the district court painstakingly detailed the parties' finances, including each party's marital and nonmarital interests in the homestead, retirement

accounts, cash, stocks, and personal property. The district court also considered the parties' circumstances, finding that father had exclusive use and possession of the homestead throughout the proceedings but failed to make mortgage payments despite a court order to do so, withdrew and dissipated funds from marital accounts, and bought a vehicle out of forfeiture after his second driving-while-impaired arrest. These findings are supported by the record.

The district court apportioned the debt associated with three of the parties' credit cards, but did not specifically apportion $13,500 of debt associated with two credit cards in father's name. Father contends that by omitting the debt, the district court made a "passive award" to mother. But father presumes that the district court would have apportioned the debt equally, and the district court was not required to do so. The district court was only required to make a fair and equitable division of property, Minn. Stat. § 518.58, subd. 1, and "[a]n equitable division of marital property is not necessarily an equal division." *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999). In fact, a fair and equitable division "does not require the [district] court to apportion marital debts[,]" and "[a] party to a dissolution may be held liable for marital debts even though the other party receives the benefit of payment." *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986) (quotation omitted), *rev. denied* (Minn. May 29, 1986). We conclude that the district court did not abuse its discretion in apportioning the parties' debt.

Attorney fees

Father challenges the district court's award of $75,000 in conduct-based attorney fees to mother.

"Conduct-based fee awards may be awarded against a party who unreasonably contributes to the length or expense of the proceedings and are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007); Minn. Stat. § 518.14, subd. 1a (2022). We will not disturb the district court's award of attorney fees absent a clear abuse of discretion. *Erickson v. Erickson*, 452 N.W.2d 253, 256 (Minn. App. 1990).

The district court made detailed findings of father's actions that "unreasonably contributed to the length and expense of th[e] proceeding." The "[m]ost serious[]" conduct, according to the court, was father's persistent claim that the parties owned marital property in Nigeria. The district court determined that the Nigerian property issue was "the primary reason for the delay of trial in June 2022 and the subsequent appointment of the special master." The special master found that father unreasonably contributed to the length and expense of the proceedings through his "vacuous" Nigerian property claim; his unwillingness to thoroughly investigate that claim; and his multiple discovery requests for information that mother had already furnished. The district court also found that mother incurred additional legal fees due to father's disregard of court orders to pay custody-evaluator fees and home expenses, and his failure to cooperate in discovery.

Because the record supports the findings that father unreasonably contributed to the length and expense of the proceeding, we affirm the district court's award of conduct-based attorney fees.

The parties' additional motions

Father moves to strike mother's appellate brief for failure to cite to the record and referencing matters outside the record. But any evidence to which mother referred without citing the record was not relevant to our analysis of the issues on appeal. Nor was any extra-record information that mother mentioned relevant to our analysis of the issues on appeal. Therefore, we deny father's motion. We note, however, that briefs to this court are required to cite to the record for each material fact. Minn. R. Civ. P. 128.03; *see Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996) (stating citations to the record "are particularly important where . . . the record is extensive") *aff'd*, 568 N.W.2d 705 (Minn. 1997); *see also Cole v. Star Trib.*, 581 N.W.2d 364, 371-72 (Minn. App. 1998) (noting that failure to cite to the record can result in an argument not being properly before this court).

Father also seeks attorney fees and sanctions from this court for what he asserts is "frivolity" in mother's brief. Because father fails to cite a procedural rule for requesting a sanction or a statute under which this court may base an award, father's motion is denied. *See State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 2007) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family law appeal); *Skyberg v. Orlich*, 10 N.W.3d 303, 309 n.6 (Minn. App. 2024) (citing *Wintz* and *Brodsky*).

Mother moves for further attorney fees, asserting that she lacks the financial resources to pay for the costs of this appeal because father has failed to comply with the district court's dissolution order. Because mother has not provided documentation supporting her claimed fees, or father's ability to pay them, mother's motion is denied. *See* Minn. R. Civ. App. P. 139.05 (addressing requests for attorney fees on appeal).

Affirmed; motions denied.