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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0917**

In re the Marriage of: Sandra Kay Vogt, petitioner,
Respondent,

vs.

Gary Dennis Vogt,
Appellant.

**Filed April 23, 2018
Affirmed
Florey, Judge**

Stearns County District Court
File No. 73-FA-14-9359

Timothy W. Billion, Robins Kaplan, L.L.P., Minneapolis, Minnesota (for respondent)

Lateesa T. Ward, Ward & Ward, P.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Cleary, Chief Judge; and
Florey, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

In this marital-dissolution dispute, appellant-husband challenges the district court's
(1) awards of temporary and permanent spousal maintenance to respondent-wife;
(2) division of martial debts and property; (3) refusal to award husband conduct-based
attorney fees; and (4) impartiality. We affirm.

FACTS

In 1970, appellant-husband Gary Dennis Vogt married respondent-wife Sandra Kay Vogt. The parties separated on October 15, 2014, at which time wife moved out of the home. Ten days later, husband allegedly drove alongside wife's vehicle and shot her in the head and back. Wife survived. Husband was arrested and charged with attempted murder.¹ Wife filed for divorce on October 30, 2014, seeking a division of the parties' property and debts, as well as maintenance and attorney fees.

Both parties are retired. Husband receives roughly \$2,200 per month from a pension, and wife receives \$1,373.50 per month in Social Security benefits. The parties acquired a number of assets during their 44 years of marriage, including a homestead valued at \$260,000. The homestead was used as collateral to open a line of credit, which was used to make purchases, pay living expenses, and make loans to the parties' son. The marital property included additional real property, personal property, vehicles, retirement accounts, and bank accounts. Husband had nonmarital assets, including heirloom watches and a "Stryker Hip Replacement settlement" worth over \$85,000.

In November 2014, after filing for divorce, wife moved for temporary relief, including temporary spousal maintenance. A hearing was held on November 17. Husband failed to file any responsive pleadings, but he appeared at the hearing. After the hearing, but before any order had been issued, husband moved for further consideration of the temporary-relief issues. In January 2015, the district court awarded wife \$2,250 per month

¹ Husband was incarcerated when the dissolution action was commenced. He was found incompetent to stand trial in the criminal matter and was civilly committed.

in temporary spousal maintenance under Minn. Stat. § 518.131 (2014), but the court scheduled the matter for a hearing to determine whether the temporary relief should be modified. In April 2015, the district court amended husband's maintenance obligation, reducing it to \$1,431.30. The amended temporary maintenance obligation was made retroactive to November 6, 2014.

A trial was held over the course of several days between March 21 and June 24, 2016. Cross-examination of wife was contentious. On the second day of trial, wife suffered a medical emergency and was taken to a hospital by ambulance. In October 2016, the district court entered a judgment dissolving the parties' marriage. Wife was awarded \$1,431.30 per month in permanent spousal maintenance, as well as conduct-based attorney fees. The marital assets were split equally. Husband received marital and nonmarital assets totaling \$273,204.13, and wife received \$212,386.03.

In December 2016, husband moved for amended findings or a new trial. He requested that the district court eliminate or reduce the spousal-maintenance award, eliminate the award of attorney fees to wife, award him attorney fees, reallocate the line-of-credit debt, and direct wife to produce certain marital and nonmarital property. The district court largely denied husband's motion, except the court clarified some findings and retracted its previous award of conduct-based attorney fees to wife. Husband appeals.

DECISION

Husband raises four primary arguments. He challenges the district court's awards of temporary and permanent spousal maintenance. He asserts that the property and debt division, particularly the division of the parties' line-of-credit debt, was inequitable and

unsupported by the record. He argues that he is entitled to attorney fees, and he challenges the district court's impartiality. We address each argument in turn.

I. The district court did not abuse its discretion by awarding wife temporary and permanent spousal maintenance.

Husband first challenges the district court's temporary and permanent spousal-maintenance awards. A district court has broad discretion in decisions regarding spousal maintenance, and we review such decisions for an abuse of that discretion. *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court's findings of fact are reviewed for clear error, and legal issues related to maintenance are reviewed de novo. *Kampf v. Kampf*, 732 N.W.2d 630, 633 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). As a threshold matter, wife contends that husband forfeited any challenge to the temporary award by failing to raise the issue in his posttrial motion. We disagree.

Under Minn. Stat. § 518.131, a party may seek temporary maintenance pending final disposition in a dissolution proceeding. Such temporary orders cease upon entry of a final decree. Minn. Stat. § 518.131, subd. 5. These temporary orders are not appealable. *Korf v. Korf*, 553 N.W.2d 706, 709 n.1 (Minn. App. 1996); *Hennepin County v. Griffin*, 429 N.W.2d 283, 284 (Minn. App. 1988); *see also* Minn. R. Civ. App. P. 103.03 (listing appealable orders and judgments). However, appellate courts may choose to review them to the extent that they affect the rulings from which the appeal is taken. *See* Minn. R. Civ. App. P. 103.04. When a final dissolution decree is entered, all allowances of temporary spousal maintenance under a prior order of the district court become merged into the judgment and are unenforceable, unless the judgment makes provision for their payment.

Richardson v. Richardson, 218 Minn. 42, 45, 15 N.W.2d 127, 129 (1944). Here, the dissolution judgment included an award to wife of \$1,431.30 for unpaid temporary spousal maintenance. Husband has appealed not only the district court's posttrial order, but also the dissolution judgment. We therefore conclude that the award of temporary maintenance is reviewable to the extent that the dissolution judgment was affected by said award.

A. Temporary maintenance

Temporary-maintenance orders under section 518.131 are generally based solely on affidavits and arguments of counsel. Minn. Stat. § 518.131, subd. 8; *see DonCarlos v. DonCarlos*, 535 N.W.2d 819, 821 (Minn. App. 1995) (stating that neither an evidentiary hearing nor detailed findings are required for a temporary maintenance order under section 518.131), *review denied* (Minn. Oct. 18, 1995). The factors governing a temporary-maintenance award under section 518.131 are contained in Minn. Stat. § 518.552 (2014). Minn. Stat. § 518.131, subd. 7. A district court may award spousal maintenance if it finds that the party seeking maintenance either

(a) lacks sufficient property, including marital property apportioned to the spouse, to provide for reasonable needs of the spouse considering the standard of living established during the marriage, especially, but not limited to, a period of training or education, or

(b) is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment, or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Minn. Stat. § 518.552, subd. 1. If a party lacks the ability to provide for himself or herself, a district court may award spousal maintenance “in amounts and for periods of time, either

temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors.” *Id.*, subd. 2. In essence, the district court balances the recipient’s needs against the obligor’s ability to pay. *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001).

Husband asserts that the modified temporary-maintenance award of \$1,431.30 per month was excessive. We disagree. In its order modifying the temporary-maintenance amount, the district court found that wife’s monthly income was \$1,630 and monthly expenses were \$5,347. Evidence in the record supports these findings. This left wife with a monthly shortfall of \$3,717.

After the initial January 2015 temporary order, but before the amended temporary order in April 2015, wife submitted a much more detailed monthly expense summary indicating monthly expenses of \$4,353. In modifying the temporary-maintenance amount, the district court effectively disregarded wife’s more detailed expense summary in favor of her initial summary. Assuming, but not deciding, that this constituted error, it was de minimis. *See Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985) (declining to remand for technical, de minimis error); *see also Prahl*, 627 N.W.2d at 702 (“Because the district court, as the factfinder, is charged with reconciling conflicting evidence, the fact that the record might support findings other than those made by the district court does not show that the court’s findings are defective.” (quotation omitted)). Even under wife’s revised expense summary, she still had a monthly shortfall of \$2,723. Moreover, in modifying the temporary-maintenance amount, the district court significantly reduced

husband's monthly obligation from \$2,250 per month to \$1,431.30, effectively accounting for a reduction in wife's expenses.

The district court found that husband's monthly pension income was approximately \$2,200. The court found that husband was incarcerated and failed to provide information on his monthly living expenses. The record indicates that husband was, at that time, in jail. However, after the initial January temporary order, but before the amended temporary order in April, an affidavit was submitted by husband's sister² stating that husband had incurred \$36,000 in legal fees³ over the preceding two months and that he had some expenses in jail, including between \$100 and \$150 per month for telephone costs, as well as other "incidentals." Again assuming, but not deciding, that the district court erred in finding that husband failed to provide information on his monthly living expenses, such error was de minimis. *See Wibbens*, 379 N.W.2d at 227. The district court, in finding that husband was incarcerated, considered his ability to meet his own needs while meeting those of wife. *See Minn. Stat. § 518.552, subd. 2(g)*. The court's temporary order left husband with sufficient funds to cover telephone calls and incidentals. The court addressed husband's attorney expenses through other means. The district court, in its temporary order of April 9, 2015, specifically allowed the parties to withdraw funds for attorney fees for the dissolution and allowed husband to withdraw funds for his criminal defense, to be later deducted from his share of the marital estate.

² Husband's sister was later appointed as his guardian ad litem.

³ The affidavit fails to provide a breakdown of husband's incurred legal expenses, and it is unclear whether the \$36,000 was incurred for his criminal defense, the dissolution, or some other matter.

Given the parties' incomes and expenses, we cannot conclude that the district court abused its broad discretion by awarding wife \$1,431.30 per month in temporary maintenance. Further, given that the only amount being reviewed here is the past-due obligation of \$1,431.30 imposed in the decree, minimal errors in determining the parties' monthly expenses are inconsequential. The divorce involved assets approaching a half-million dollars. *See Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (concluding that a \$400 error in calculation by the district court was de minimis), *review denied* (Minn. Nov. 16, 2010).

Husband argues that wife's temporary-maintenance award constituted a windfall because she had access to approximately \$30,000 in marital assets to pay for her expenses. However, wife, in an affidavit, gave an accounting of how nearly \$25,000 of those assets were expended between October 2014 and February 2015. The affidavit, at a minimum, indicated that wife was running a monthly deficit and did not have the ability to provide for her reasonable needs. *See* Minn. Stat. § 518.552, subd. 1. The district court found that wife was "solely responsible for payment of all monthly expenses and protecting the marital estate," and her reported monthly expenses did not include "medical expenses resulting from injuries allegedly inflicted by [husband]." Husband's argument that wife received a windfall is unavailing. Husband also attacks the veracity of wife's expense summary. The district court found the summary to be credible. We will not second-guess a district court's credibility determination. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The record supports the award of temporary maintenance.

B. Permanent maintenance

Husband challenges the award of permanent spousal maintenance, arguing that the award is excessive and that wife's actual expenses do not support the award. The district court awarded wife \$1,431.30 per month, based on findings that she receives \$1,373.50 in monthly income, her monthly expenses are \$3,100, and her projected future monthly expenses are \$3,144.11. Accordingly, wife has a projected monthly shortfall of \$1,770.61. The court noted that wife was 65 years old and "fully disabled." The court found that husband receives approximately \$2,200 per month from a pension, and his expenses are minimal because he is committed. The findings underlying the district court's permanent-maintenance award are supported by the record, and we cannot conclude that the district court abused its broad discretion in making such an award.

Husband claims wife's expenses are inflated and inconsistent. He points to wife's three submitted expense summaries: an October 2014 summary showing monthly expenses of \$3,155, a November 2014 summary showing monthly expenses of \$5,347.51, and a February 2015 summary showing monthly expenses of \$4,353.

At trial, wife submitted additional evidence to show her monthly expenses. In awarding permanent maintenance, the district court relied on wife's revised expense summary of February 2015, as well as the additional evidence and testimony received at trial. For example, the district court found that wife had monthly medical expenses of \$90, rather than the \$433 reported in February 2015. The district court's expense findings are supported by the record.

II. The district court did not abuse its discretion by equally dividing the parties' line-of-credit debt, and the division of the parties' marital property was not based on clearly erroneous findings.

Husband next challenges the district court's division of the parties' marital debts and property. "District courts have broad discretion over the division of marital property and appellate courts will not alter a district court's property division absent a clear abuse of discretion or an erroneous application of the law." *Sirek v. Sirek*, 693 N.W.2d 896, 898 (Minn. App. 2005). A division of marital debts is treated the same as a division of marital assets. *Justis v. Justis*, 384 N.W.2d 885, 889 (Minn. App. 1986), *review denied* (Minn. May 29, 1986). "To overcome the presumption that property [acquired during the parties' marriage] is marital, a party must demonstrate by a preponderance of the evidence that the property is nonmarital." *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). "Appellate courts will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though the appellate court might have taken a different approach." *Sirek*, 693 N.W.2d at 898 (quotation omitted). "We defer to the [district] court's findings of fact and will not set them aside unless they are clearly erroneous." *Id.* (quotation omitted).

Husband challenges the division of the parties' line-of-credit debt, the division of an insurance payment for a damaged vehicle, and the division of marital diamonds and nonmarital watches. We address each issue in turn.

A. Line-of-credit debt

Husband argues that the district court's division of the parties' line-of-credit debt was inequitable and unsupported by the record. The line-of-credit debt, at the time of the

decree, was approximately \$134,993. The district court divided the debt equally, except that wife was apportioned an additional \$700 of debt.

Husband first asserts that, between 2009 and 2014, \$54,604 of debt was incurred for the benefit of third parties and against husband's express directives. Essentially, he argues that wife gave unauthorized gifts and/or loans to the parties' son and daughter-in-law. Husband cites Minn. Stat. § 519.05(a) (2016) for the proposition that the \$54,000 in gifts and loans is a nonmarital debt. Section 519.05(a) states that "[a] spouse is not liable to a creditor for any debts of the other spouse." But, the issue here is not one of debts owed to a creditor, and Minn. Stat. § 519.05(a) is therefore inapplicable.

Husband also points to Minn. Stat. § 518.58, subd. 1 (2016), which requires district courts, when dividing marital assets, to consider "the contribution of each in the acquisition, preservation, depreciation or appreciation in the amount or value of the marital property." The district court found that "both parties had access to and control over the [line-of-credit] account," and that husband failed to offer proof that wife dissipated or wasted marital assets. These findings are supported by the record. The district court did not abuse its broad discretion in dividing the line-of-credit debt equally.

Husband points to \$22,776.73 that wife withdrew from the parties' line of credit on October 6, 2014, prior to the parties' separation. He asserts that there is a recorded police statement wherein wife stated that she decided to take the funds because she was leaving husband. Under Minn. Stat. § 518.58, subd. 1a (2016), a spouse contemplating divorce may not dispose of marital property without the consent of the other spouse, except to pay for normal living expenses or in the usual course of business. Husband had the burden of

showing that wife disposed of the marital assets in contemplation of separation or divorce and that the assets were not spent “in the usual course of business or for the necessities of life.” Minn. Stat. § 518.58, subd. 1a. The district court specifically accepted wife’s accounting of how the withdrawal was spent and determined that all but \$700 of the withdrawal was used for living expenses and to pay marital debt. The district court found wife’s accounting to be credible, and we will not second-guess a district court’s credibility determination. *Sefkow*, 427 N.W.2d at 210. Even in the recorded statement to police that husband cites, wife states that she took the funds in order to make payments on the parties’ line-of-credit debt.

B. Insurance proceeds

Husband challenges the district court’s apportionment of an insurance payout. The insurance payout was made to wife because her vehicle was damaged during the alleged attempted murder. Wife received \$13,688.25 and used the funds to pay outstanding debts, with \$9,401.04 of those debts being marital in nature, and \$4,287.21 being nonmarital. The district court determined that the insurance payment was a marital asset and awarded \$8,987.73 to wife and \$4,700.52 to husband. Essentially, the court considered the amount that wife had spent on nonmarital debt as part of her property award. The district court did not abuse its discretion.

Husband challenges wife’s claim that she used part of the insurance payout for marital debt, namely, property taxes. Wife claimed that she spent \$2,654.36 on property taxes: \$1,288.44 for the first-half property taxes for the homestead, and \$1,365.92 for the first-half property taxes for a hunting parcel. Husband argues that wife’s claim concerning

the taxes is false and unsupported by the record. The record supports the district court's finding that wife used the insurance payout for taxes. Wife testified as much, and the district court found the testimony to be credible. *See Sefkow*, 427 N.W.2d at 210.

C. Diamonds and watches

Husband argues that he should be awarded "at least \$1,000" for diamonds and "a reasonable amount" for watches, which wife failed to produce. The district court, in the decree, effectively concluded that the diamonds were marital property and ordered that they be auctioned. The court determined that the watches were husband's nonmarital property. Wife claims that the diamonds and watches could not be located.

Husband moved for a new trial or amended findings and argued that wife did not produce the diamonds for auction and did not return the nonmarital watches. The court clarified the language in the decree by noting that if watches are located by wife, they shall be returned to husband, and if the diamonds are located by wife, half of the value of the diamonds shall be given to husband.

Husband fails to illuminate a defect in the decree or posttrial order. He argues that he should have been awarded "half the monetary value of the parties' diamonds." He was awarded half the value; the diamonds simply have not been produced. He argues that he should receive fair compensation for the watches, but he was awarded the watches themselves, they just have not been produced. On the peculiar facts in the record, we discern no reversible error.

III. We decline to address husband’s argument concerning attorney fees.

Husband next argues that he was entitled to conduct-based attorney fees because wife made frivolous motions and false statements. His argument is unsupported by legal analysis or citation. We therefore decline to address the issue. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address issues unsupported by legal analysis or citation).

III. Husband’s claims of judicial bias are unavailing, and his due-process rights were not violated.

Finally, husband argues that the district court was biased. He asserts that the district court was overly critical of him, overly sympathetic to wife, and consistently made rulings in wife’s favor. Upon review, we find no evidence of judicial bias or violation of husband’s right to due process.

In reviewing claims of judicial bias, we consider whether the district court “considered arguments and motions made by both sides, ruled in favor of a complaining [party] on any issue, and took actions to minimize prejudice.” *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). We presume that judges approach cases with a neutral and objective disposition. *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). We consider the record as a whole when addressing claims of judicial bias. *State v. Morgan*, 296 N.W.2d 397, 404 (Minn. 1980).

The district court’s rulings are not indicative of bias, and furthermore “[a]dverse rulings by a judge, without more, do not constitute judicial bias.” *State v. Sailee*, 792 N.W.2d 90, 96 (Minn. App. 2010), *review denied* (Minn. Mar. 15, 2011) (quotation

omitted). The district court divided the parties' marital property equally and awarded husband a significant amount of nonmarital property, resulting in his total property award being greater than wife's award. The district court denied wife's request to place husband's nonmarital property into a constructive trust. The district court also amended the decree and removed an award of attorney fees to wife. This is not indicative of bias.

The district court's comments and actions during the proceedings also fail to show bias. This was a contentious divorce, and husband was charged with attempting to murder wife prior to the proceedings. On the second day of trial, there was a medical incident, and wife was removed from the courtroom and taken to the hospital. Subsequently, wife requested that she undergo cross-examination via written questions, but the district court required that she be subjected to oral cross-examination. This evidences impartiality.

Husband argues that the district court repeatedly accused him and his counsel of depleting marital funds. He points to an instance where the court was discussing the slow pace of trial. Counsel for wife stated that the lengthy trial was depleting the marital estate, and the court echoed this concern. This comment does not demonstrate judicial bias. Rather, the district court was voicing a legitimate concern that had implications for both parties. The record indicates that the parties were significantly depleting marital assets on legal fees. Husband argues that the district court displayed bias by referring to wife as an alleged victim of domestic violence who was being retraumatized at trial. However, the court was simply addressing the quality of wife's testimony and speaking in general terms. Upon review, the totality of the circumstances do not indicate judicial bias.

Husband asserts that his right to due process was violated because the court limited wife's deposition to a written-response format and limited his ability to cross-examine wife during the trial. District courts have wide discretion regarding discovery and, absent an abuse of that discretion, a district court's discovery decision will not be altered on appeal. *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). Husband fails to develop his argument or offer any legal analysis on how the use of a written-format deposition violates his right to due process. We therefore decline to address this issue. *See Ganguli*, 512 N.W.2d at 919 n.1 (declining to address issues unsupported by analysis or citation). As for cross-examination, husband's due-process rights were not violated. Due process requires that a hearing be "fair, practicable, and reasonable." *Saturnini v. Saturnini*, 260 Minn. 494, 498, 110 N.W.2d 480, 483 (1961). The scope of the hearing must be "appropriate to the nature of the case." *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786 (1971). The district court, in an effort to limit the stress to wife, requested that counsel for husband refrain from using exhaustive impeachment efforts and simply offer the evidence inconsistent with wife's testimony. Generally, a wide range of inquiry should be allowed on cross-examination, but the manner and scope of that examination rests largely with the discretion of the district court, and no reversible error occurs unless there is a clear abuse of that discretion. *Mattfeld v. Nester*, 226 Minn. 106, 126, 32 N.W.2d 291, 305 (1948). Here, given the extent of the cross-examination that husband was allowed to undertake, and the prior medical incident in the courtroom, the district court's effort to streamline the impeachment process was not an abuse of discretion.

Affirmed.