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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-91**

In re the Marriage of:
Richelle Renee Lyons, petitioner,
Respondent,

vs.

Robert Thomas Lyons,
Appellant,

Ramsey County, intervenor,
Respondent.

**Filed November 7, 2011
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-FA-08-1622

James D. Capra, James D. Capra, Inc., St. Paul, Minnesota (for respondent Richelle Renee Lyons)

Jerome M. Rudawski, Rudawski Law Office, P.A., Roseville, Minnesota (for appellant)

John J. Choi, Ramsey County Attorney, Patrick M. Hest, Assistant County Attorney, St. Paul, Minnesota (for respondent Ramsey County)

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Minge, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this marital-dissolution matter, appellant-husband challenges the district court's division of marital property, award of spousal maintenance, and award of child support. We affirm.

FACTS

The parties married on December 9, 2000. In March 2001, they purchased a home in St. Paul for \$139,000. In April 2002, they had a son. Respondent-wife Richelle Renee Lyons left the workforce after the child was born to care for him and be a homemaker. Appellant-husband Robert Thomas Lyons is a self-employed journeyman carpenter who does business as Lyons Mane Construction, which he founded in approximately 2004.

Wife petitioned for divorce in June 2008. The issues at trial were property division, spousal maintenance, and child support. In its dissolution order, the district court awarded wife temporary monthly spousal maintenance of \$2,500 for two years and ordered husband to pay \$692 in permanent monthly child support. The court awarded husband Lyons Mane Construction and awarded wife the home and the marital portion of husband's pension with the Twin City Carpenters and Joiners Pension Fund.

The district court noted that just before trial, husband had left a skilled construction position earning more than \$100,000 a year for a retail position earning approximately \$16,000 a year. The district court found that husband was manipulating the circumstances to create a false financial appearance and observed: "[Husband] is voluntarily underemployed. His conduct appears to be an attempt to commit fraud upon

[wife] and the Court.” The district court further found that husband had told wife that he would not pay maintenance, that husband “ha[d] engaged in economic warfare against [wife] throughout this two-year proceeding,” and that husband had a history of avoiding support obligations. The district court imputed \$8,917 in monthly potential income to husband based on the finding of his intentional underemployment and his earnings of \$107,000 reflected by his 2009 1099 form. The district court denied husband’s posttrial motion. This appeal follows.

D E C I S I O N

I.

Husband argues that the district court abused its discretion by considering wife’s exhibits in reaching its decision. He contends that the exhibits should have been excluded from the record because wife did not timely serve them on husband’s counsel before trial (in violation of the scheduling order) and because wife did not properly offer all of her exhibits thereby depriving husband’s counsel of an opportunity to object to them. We review a district court’s evidentiary ruling for abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997).

Wife appeared pro se. “A trial court has a duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party.” *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987).

Minn. R. Civ. P. 37.02(b)(2) expressly permits exclusion of evidence as a sanction for violating a discovery order. But a party’s violation of a scheduling order generally only warrants exclusion on a showing of prejudice. *See* Minn. R. Civ. P. 61 (stating that

harmless errors by any party are to be disregarded by the district court). Here, husband's counsel never expressly claimed prejudice, and he declined the district court's offer to review the exhibits before beginning trial. And counsel's own use of the contested exhibits in cross-examining wife tends to indicate a waiver, rather than an assertion, of a claim of prejudice. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that issues not presented to and decided by the district court are waived on appeal).

Husband also argues that wife's exhibits should be excluded because they were never properly offered or admitted into evidence at trial, thereby depriving him of the opportunity to object to them and thus a fair hearing. But husband's counsel did object to two of wife's exhibits, demonstrating that wife's failure to expressly offer the exhibits did not in fact prevent him from objecting. And because he could have objected, but chose not to, he has waived any challenge to wife's exhibits on appeal. *See id.*

Nor does husband specify how, or even that, he was prejudiced by the court's admission and consideration of wife's exhibits. He simply argues that consideration was "unfair and unjust" and "put [husband and his counsel] at a disadvantage." He does not specify how any individual exhibit harmed his case or provide a basis for excluding any exhibit. We therefore conclude that the district court acted within its discretion by considering wife's exhibits in its decisions in this matter.

II.

Husband argues that the district court abused its discretion in its division of the marital property. We review the district court's property division for abuse of discretion and will reverse only for an abuse of that discretion. *Gottsacker v. Gottsacker*, 664

N.W.2d 848, 852 (Minn. 2003). “We will affirm the [district] court’s division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach” and we will not set aside the district court’s findings of fact unless they are clearly erroneous. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002).

Husband’s challenge to the division of marital property consists of a challenge to various valuations that the district court made for the purpose of equitably dividing the parties’ property. We do not require a district court to be exact in its valuation of assets so long as the value “lies within a reasonable range of figures.” *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

Husband contends the district court’s finding that the parties’ homestead had a value of \$165,000 is clearly erroneous because it was supported solely by a market analysis prepared by a realtor, indicating the prices of comparable properties near the homestead. Husband maintains that the homestead is not comparable to the houses referenced in the analysis and asserts that the homestead is worth approximately \$350,000. Husband’s only support for his position on this issue is his own testimony. The district court’s valuation, based on the realtor’s estimate, is within the reasonable range of prices in light of the fact that the parties purchased the homestead in 2001 for \$139,000. The finding as to valuation is not clearly erroneous.

Husband challenges the district court’s finding that wife contributed \$31,180 in nonmarital funds to the down payment of the homestead based on five exhibits that the court determined established and traced the use of wife’s nonmarital funds for the homestead. Husband contends that the court’s consideration of and weight given to each

of the five exhibits constituted an abuse of discretion and that the resulting finding was clearly erroneous. We generally defer to the district court's determination of the weight and credibility of the evidence. *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996).

The five exhibits included an estimate of proceeds prepared by a realtor for wife concerning the home that she sold to fund the purchase of the contested homestead; a bank statement; a note and disclosure statement; a residential-loan application; and a letter to wife from husband in which he discusses her financial contribution to the homestead. Husband alleges that the exhibits contain inconsistencies that were compounded by wife's allegedly untruthful testimony at trial. But the district court weighed and credited the exhibits as it deemed appropriate, and husband's argument is supported only by his bare assertions. The finding concerning wife's nonmarital interest in the homestead is not clearly erroneous.

Husband next argues the district court clearly erred by finding, on the basis of wife's testimony, that a lien exists against the homestead. We will not disturb the district court's findings, as they concern the weight and credibility of testimony.

Husband argues that the district court erred by finding that "[t]he full extent of [husband's] debts is unknown to the Court." The record is clear, and the district court found repeatedly, that husband was especially unforthcoming in disclosing information about assets in his control, including his business, the homestead, and his pension. Husband contends that his debt was known to the district court because he testified that he had essentially not filed an income tax return since 2004. Rather than challenging the

district court's finding that his debt was not known, husband appears to be arguing that the district court underestimated the amount of his debt in dividing the parties' property. In either case, the district court's finding that it lacked a full picture of husband's finances and debt is not clearly erroneous.

III.

Husband argues that the district court clearly erred in determining his gross annual income and abused its discretion by imputing income to him for the purpose of determining maintenance and child support. The district court's determination of income will not be overturned unless it is clearly erroneous. *Davis v. Davis*, 631 N.W.2d 822, 827 (Minn. App. 2001). If a party is voluntarily underemployed, the district court must calculate child support based on that parent's potential income. Minn. Stat. § 518A.32, subd. 1 (2010). When a district court imputes potential income, it exercises broad discretion, and we review that imputation for an abuse of discretion. *Cf. Butt v. Schmidt*, 747 N.W.2d 566, 574 (Minn. 2008) (noting that imputing income under prior statute is reviewed for abuse of discretion).

Noting that husband's gross annual income had suddenly gone from \$107,000 (according to husband's 2009 1099 form) to just over \$16,000 (based upon husband's current pay stubs) "[o]n the eve of trial," the district court found that husband was attempting to defraud the district court and wife. As a result, the district court found that husband is voluntarily underemployed and imputed income to him based upon his 2009 1099 form. Husband contends that the district court failed to consider the evidence supporting his claim that he earns less than \$20,000 annually. The record is clear that the

district court was aware of husband's current annual income but found that husband's bad faith was responsible for his voluntary sudden decrease in income, and therefore determined that it was appropriate to impute income to him.

Husband also argues that the district court abused its discretion by imputing income to him above 150% of minimum wage, which he contends constitutes a violation of Minn. Stat. § 518A.32, subd. 2(3) (2010). Husband misconstrues the statute, which provides three methods for determining potential income:

(1) the parent's probable earnings level based on employment potential, recent work history, and occupational qualifications in light of prevailing job opportunities and earnings levels in the community;

(2) if a parent is receiving unemployment compensation or workers' compensation, that parent's income may be calculated using the actual amount of the unemployment compensation or workers' compensation benefit received; or

(3) the amount of income a parent could earn working full time at 150 percent of the current federal or state minimum wage, whichever is higher.

Minn. Stat. § 518A.32, subd. 2 (2010). The district court here used the first method. Husband argues that because the amount of imputed potential income exceeded 150% of the minimum wage, it violates the statute. But the statute only requires that the district court choose one of the three appropriate methods. *Id.* The district court properly determined husband's gross annual income and imputed potential income to husband. The court accordingly acted properly in calculating appellant's child-support obligation.

Husband contends the district court abused its discretion by awarding wife two years of temporary maintenance, arguing that the award is unreasonable and unrealistic in

light of his income and outstanding debt. We review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion in setting maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Id.* A party challenging the findings must show that, despite viewing the evidence in the light most favorable to the district court's findings, 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). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.*

The district court awarded wife \$2,500 in monthly maintenance for two years. Husband challenges the district court's decision to impose a maintenance obligation that exceeds his actual monthly income. But the district court based its maintenance award on husband's imputed potential income of \$8,917 per month. Based on this record, the district court properly exercised its discretion in its award of maintenance.

Affirmed.