STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0450

In re the Marriage of: Jane Ann Kuske,
n/k/a Jane Ann Holm, petitioner,
Respondent,

vs.

Stephen Edward Kuske,
Appellant,

County of Dakota,
Intervenor.

Filed February 11, 2013
Affirmed
Rodenberg, Judge

Dakota County District Court
File No. 19-F1-06-008876

Jane A. Holm, Eagan, Minnesota (pro se respondent)

Stephen E. Kuske, Fairmont, Minnesota (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Connolly, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

RODENBERG, Judge

In this child support dispute, pro se appellant-father argues that the district court erred in (1) failing to refer his motions to a child support magistrate (CSM) for the expedited process, and (2) denying his motions to reduce child support. Appellant also raises issues beyond the scope of the present appeal. We affirm.

FACTS

Appellant Stephen Kuske and respondent Jane Kuske (n/k/a Jane Holm) were married and are the parents of three minor children. The parties separated in July 2005. They were then living in Colorado, where respondent filed a petition for dissolution. The district court in Colorado established child support and ordered appellant to pay $1,392 for monthly child support.

The parties stipulated to transfer the dissolution case to Minnesota in August 2006. Following lengthy and contested proceedings, the district court entered a judgment and decree in February 2009. The district court initially granted the parties joint legal custody of the children and awarded respondent sole physical custody, but later awarded respondent sole legal custody, finding that appellant had largely failed to exercise his parenting time with the children for over three years. Appellant's monthly child support obligation was set at $1,392.

Appellant became unemployed in July 2009 and began collecting unemployment benefits. Upon motion, the district court reduced appellant's monthly child support obligation to $569.

On March 21, 2011, appellant filed a motion with the CSM to reduce his monthly child support obligation to zero. Appellant alleged that his income had been substantially reduced again, because his unemployment benefits had ended. Appellant also requested additional relief, including correction or expungement of his criminal record, a refund for alleged overpayment of past child support, and clarification of the district court's original child support order. Additionally, appellant challenged his parenting time and child custody, alleging that respondent was alienating the children from him. In support of his motion, appellant submitted a purported affidavit, which was not notarized, and other documents. Appellant requested an order on his motion via the expedited process. The CSM referred the entire matter to the district court, because the motions addressed issues not appropriate for decision in the expedited process.[1]

On March 23, 2011, appellant filed an "abbreviated motion to modify support," which, purporting to replace the March 21 motion, requested only a reduction in child support to zero or $1 via the "expedited process without a hearing" and no other relief. Based on appellant's withdrawal of all issues other than child support, the district court again referred the matter to the expedited process.

On April 18, 2011, appellant filed additional documents with the CSM, again seeking additional relief, including clarification of the allocation of the dependency exemptions for the children, and requesting repayment for respondent's alleged "theft" of "pre-tax reimbursements, tax exemptions, and child credits." Appellant requested that an

[1] Minn. R. Gen. Pract. 353.01, subd. 3, identifies "proceedings and issues [which] shall not be conducted or decided in the expedited process," including custody and parenting time issues.

order be issued without a hearing or, if a hearing was demanded, that an "ADR certified professional" be appointed. Appellant also alleged that respondent was violating various court orders regarding the allocation and use of tax exemptions. Following a hearing, the CSM determined that appellant's motions were beyond the scope of the expedited process and noted that portions of the file were unavailable because of a pending appeal at this court.[2] The CSM again referred the motions to the district court.

In September 2011, appellant again filed motion papers requesting reduction of his child support obligation to zero "via expedited process without a hearing," which request he had previously made in March 2011. The district court sent appellant several letters explaining that Dakota County had requested a hearing, and the court had reserved December 20, 2011, as a hearing date. The district court also explained that, to have his motion(s) heard, appellant would be required to serve all parties with a proper notice of motion, motion, and affidavit(s); that he could not rely on the unsworn documents he had previously mailed to the court; that he would be required to articulate the specific relief requested; and that he would be required to follow the rules of procedure by submitting sworn affidavit(s) in support of his motion.

[2] Appellant's prior appeal, filed in January 2011, challenged (1) the district court's order suspending interest on his child support arrears; (2) the district court's alleged refusal to issue an order on his motion regarding parenting time; and (3) the district court judge's denial of appellant's request that the judge recuse himself due to alleged bias. *See Kuske v. Kuske*, No. A11-146, 2011 WL 3426170 (Minn. App. Aug. 8, 2011). We affirmed. *See id.*

Dakota County and respondent each indicated in correspondence to the district court that they had not been served with appellant's motion or any motion papers concerning the reserved hearing date of December 20, 2011.

Appellant appeared at the December 20, 2011 hearing by telephone. He did not present any evidence or request an opportunity to do so. He submitted no notarized affidavits in support of his motions.

The district court denied appellant's motions in an order dated January 10, 2012. The district court expressed that it had difficulty ascertaining what relief appellant was seeking because he "repeatedly insists that the matters belong in the expedited process but almost all of the relief requested is outside the statutory parameters of the expedited process." The district court concluded that the expedited process was therefore not available. It also concluded that appellant's motions wholly failed to comply with the applicable procedural rules and lacked proper supporting affidavits.

This appeal followed.

D E C I S I O N

On appeal from the district court's order dated January 10, 2012, appellant appears to argue that the district court erred in (1) concluding that the expedited process was not an appropriate forum for appellant's motions and (2) denying appellant's motions because appellant failed to comply with the applicable procedural rules.

As a preliminary matter, we observe that pro se parties are generally held to the same standard as attorneys with regard to adherence to the rules of appellate procedure. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Appellant's briefs to

this court neither articulate comprehensible legal arguments nor cite to legal authorities. Such failures generally result in a waiver of the issues on appeal. *State v. Sontoya*, 788 N.W.2d 868, 876 (Minn. 2010). Because of these deficiencies, it is difficult to conduct meaningful appellate review in this case. Nonetheless, in the interest of justice, we will attempt to do so as authorized by Minn. R. Civ. App. P. 103.04. *See Putz v. Putz*, 645 N.W.2d 343, 350 (Minn. 2002) (invoking Minn. R. Civ. App. P. 103.04).

I.

Appellant challenges the district court's determination that his motions raised issues beyond the scope of the expedited child support process, arguing that his motions should have been decided by the CSM. Appellant argues that the district court does not have jurisdiction over expedited motions in IV-D cases, such as this one.

Appellant's arguments concern questions of law, which we review de novo. *See Modrow v. JP Foodserv., Inc.*, 656 N.W.2d 389, 393 (Minn. 2003). Specifically, whether the district court had subject matter jurisdiction is a question of law subject to de novo review. *See Odenthal v. Minn. Conf. of Seventh-Day Adventists*, 649 N.W.2d 426, 434 (Minn. 2002).

A IV-D case is one in which a party has applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4) (2006). Minn. Stat. § 518A.26, subd. 10 (2012); Minn. R. Gen. Pract. 352.01(g). Minnesota law establishes an expedited child support hearing process for IV-D cases, which is designed to handle child support issues in compliance with federal law. *See* Minn. Stat. § 484.702, subd. 1(a) (2012) (defining parameters for the expedited process).

Proceedings for establishing, modifying, or enforcing child support in IV-D cases "must be" conducted in the expedited process. *See id.*, subd. 1(a), (b) (2012) (providing that in general, "[a]ll proceedings establishing, modifying, or enforcing support orders . . . must be conducted in the expedited process if the case is a IV-D case"). However, parties may bring child support motions in IV-D cases in the district court "where additional issues involving domestic abuse, establishment or modification of custody or visitation, or property issues exist as noticed by the complaint, motion, counter motion, or counter action." *Id.*, subd. 1(c) (2012). The rules also provide that, when a proceeding is commenced in the expedited process but the motion or pleadings raise issues other than or in addition to child support issues, the CSM may refer the entire matter to the district court. Minn. R. Gen. Pract. 353.02, subd. 3; *see also id.*, .01, subds. 2–3 (delineating the limited scope of issues that may be decided in the expedited process).

Although this is indeed a IV-D case, appellant's motions and documents filed in March, April, and September 2011 requested relief beyond the scope of the expedited process. Appellant raised issues regarding his criminal record in other files, his access to records for respondent's child-care expenses and income documents, and his rights of parenting time and child custody. He also raised issues relating to prior district court orders regarding property division. These issues do not pertain to the establishment, modification, or enforcement of child support. Because the motions and documents filed before the December 2011 hearing raised issues that did not pertain to child support, the CSM appropriately referred the entire matter to the district court. *See id.*, .02, subd. 3.

The district court did not err in concluding that appellant had requested relief outside the scope of the expedited process. The district court therefore had subject matter jurisdiction to decide the motions. *See* Minn. Stat. § 484.01, subd. 1(1) (2012) (conferring original jurisdiction on the district court over "all civil actions within their respective districts").

II.

The district court denied appellant's motions because appellant's motion papers were not accompanied by any notarized affidavits, he failed to properly serve the motion papers on the other parties, it was unclear to the district court what relief appellant was requesting, and appellant did not present any testimonial or other admissible evidence at the hearing on his motions.

Pro se litigants are generally held to the same standards as attorneys and must comply with court rules. *Fitzgerald*, 629 N.W.2d at 119. The applicable rules require motions to be served on all parties, including a notice of motion, motion, and "relevant signed, sworn and notarized affidavits and exhibits." Minn. R. Gen. Pract. 303.03(a)(1). Motions must "set out with particularity the relief requested." *Id.*, .02(a).

Here, despite specific written guidance from the district court, appellant failed to submit notarized affidavit(s) and did not properly serve his motion papers on the other parties. *See id.*, .02(a), .03(a)(1). Accordingly, the district court denied appellant's motions for noncompliance with the rules. This was not error. To the contrary, it would have been error to grant the purported motions absent proper service. *See id.*, .03(a)(1) ("No motion shall be heard unless the moving party . . . properly serves a copy of the

following documents on all parties . . . ."). The district court proceeded with the hearing despite appellant's noncompliance with the rules.[3] Appellant also failed to remedy the deficiencies in service or provide a colorable claim of justification or excuse for his noncompliance. As a result of these multiple deficiencies, the district court had neither a properly noticed motion nor competent evidence in the form of affidavit(s) regarding appellant's alleged reduction in income. Therefore, the district court did not err in denying appellant's motions.

III.

Appellant raises several other issues, all of which are either not adequately preserved for appeal or have no merit.

First, appellant argues that many of his district court filings have "disappeared from the file." The proper procedure for correcting or modifying the district court record is set forth in Minn. R. Civ. App. P. 110.05. Appellant has made no effort to comply with this rule, and thus has failed to establish any basis for us to grant relief.[4]

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[3] We observe that the district court could have cancelled the hearing due to the procedural deficiencies of the motions, but nonetheless acted within its discretion to proceed. *See* Minn. Gen. R. Pract. 303.03(b) (providing that in case of a party's noncompliance with the motion rules, the "hearing *may* be cancelled by the court" (emphasis added)). The district court also has the discretion to "refuse to permit oral argument by the party not filing the required documents, [to] consider the matter unopposed, [to] allow reasonable attorney's fees, or [to] take other appropriate action." *Id.* It appears to us that the district court was extremely patient with appellant and accorded him guidance and latitude.

[4] Appellant has attempted to file additional documents with the district court on multiple occasions. Noting appellant's failure or refusal to abide by the applicable court rules in making submissions to it, the district court has now entered an order dated December 10, 2012, precluding appellant from submitting any "additional documentation" other than by motion and in compliance with court rules. Any other documents not submitted to the district court for filing in conformity with the applicable rules "will be returned" to

Appellant next argues that the district court judge "demands physical presence of the parties for his hearings" and that this is "breaking state law." The statute on which appellant relies provides that physical presence is not required "for the establishment, enforcement, or modification of a support order." Minn. Stat. § 518C.316(a) (2012). Appellant's motions raised issues beyond the establishment, enforcement, or modification of child support. In any event, the district court did permit appellant to appear at the December 20, 2011 hearing by phone and did *not* require his physical presence at the hearing. Appellant's argument is without merit.

Appellant contends that requiring sworn or notarized affidavits violates his constitutional right of freedom of religion. He does not present any discernible legal arguments in support of this contention. As appellant did not raise this argument below and does not cite any legal authority in support of his position on appeal, this issue is waived. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts generally will not consider matters not raised in district court).

Appellant also argues that the county attorney did not have "statutory authority" to intervene in the matter. Because appellant failed to raise this argument below, this issue also is waived. *See id.* Even if the issue had been raised, the county is entitled to intervene in IV-D cases as a matter of right in order to ensure that child support orders are obtained and enforced. *See* Minn. Stat. §§ 518A.26, subd. 18 (defining "public

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appellant. Appellant also urges us to rely on documents outside of the district court record. This court may not consider documents beyond the record on appeal. *See* Minn. R. Civ. App. P. 110.01. We therefore do not consider appellant's extraneous submissions.

authority" as "the local unit of government, acting on behalf of the state, that is responsible for child support enforcement"); .49(b) (providing that, in IV-D cases where there has not been an assignment of support, the "public authority may intervene as a matter of right") (2012).

Appellant next argues that the district court failed to issue an order on his prior motions regarding parenting time (filed in September 2010). Those motions were the subject of appellant's prior appeal, in which he raised the same argument. *See Kuske*, 2011 WL 3426170, at *2–3. This court has already addressed and rejected appellant's argument regarding the parenting-time motions. *See id.*

Appellant also appears to bring various challenges to the district court's award of custody and parenting time, and he requests expungement or correction of his criminal record. Appellant does not cite any legal authority in support of these arguments. Moreover, as these issues do not pertain to the January 10, 2012 order, they are beyond the scope of the present appeal.

Appellant contends that the presiding district court judge was biased against him and should have been removed. Appellant's serial attempts to remove the judge were the subject of his previous appeal. *See id.* at *2, *4–5. We decline to reconsider the issue.

Appellant also submitted a letter to this court dated November 13, 2012, along with other documents, seeking additional relief. Any request for an order or other relief should be made by motion with four copies and proof of service. Minn. R. Civ. App. P. 127. Appellant fails to cite authority for the relief he seeks, but largely reiterates the same arguments raised in his appellate briefs. Additionally, appellant has repeatedly

initiated and engaged in unauthorized communications with court staff of this court. We deny all relief requested.

In sum, appellant has not established grounds for appellate relief. As in his last appeal, appellant's briefs do not set forth comprehensible legal arguments, as required, "but mostly are rants, laced generously with personal invective against the presiding district court judge." *Kuske*, 2011 WL 3426170, at *5. The district court did not err in denying appellant's motions.

Affirmed.