STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1948

In re the Marriage of:
Pamela Jo Cavanagh, petitioner,
Respondent,

vs.

William P. Cavanagh,
Appellant.

Filed August 5, 2013
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-FA-10-1240

Phillip Gainsley, Minneapolis, Minnesota (for respondent)

William P. Cavanaugh, Edina, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Rodenberg, Judge; and Huspeni, Judge.*

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

RODENBERG, Judge

Appellant challenges the district court's denial of his motion to reduce his child-support and spousal-maintenance obligations. We affirm.

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

FACTS

Although the history of this case is not lengthy, it is convoluted, involving a succession of post-decree proceedings initiated primarily by appellant. Appellant's motions have come in such rapid succession that he has made a second motion on a subject while a prior motion on that same subject is under advisement. The following brief history is limited to the facts and the district court proceedings relating to the issues reasonably raised by this appeal.

Appellant William P. Cavanagh and respondent Pamela Jo Cavanagh were married in 1990. Three children were born of the marriage. Appellant is the sole shareholder of a subchapter S corporation, Gunflint Capital, and holds partial ownership interest in two other companies. Respondent was unemployed or working part-time at the time of separation. In March 2011, and based upon the parties' partial agreement, the district court dissolved the parties' marriage, awarded respondent spousal maintenance for ten years on a graduated basis, and ordered appellant to make child-support payments of $1,654.00 per month. The district court also awarded respondent half of the parties' checking and savings accounts, and $5,585.39 from a Gunflint Capital Wells Fargo Checking and Savings Account (Wells Fargo account).

On April 8, 2011, appellant moved to amend the March 2011 judgment and decree. On April 27, 2011, respondent filed a motion with the district court requesting that appellant be found in constructive civil contempt for failure to pay child support and spousal maintenance, and for refusing to accomplish the division of financial accounts as ordered by the district court. On September 7, 2011, the district court amended the

judgment and decree by modifying the parenting-time schedule, amending the parties' respective budgets, and decreasing appellant's child-support obligation to $1,178.00 per month.

On October 4, 2011, appellant moved the district court for modification of his child-support and spousal-maintenance obligations. Appellant claimed that his gross monthly income had substantially declined since the most recent child-support and spousal-maintenance order. Appellant claimed that he had no monthly income and that he had received no paychecks in over one year because his mergers-and-acquisitions business had been affected by the recession. A hearing on this motion was held on November 29, 2011.[1] In February 2012, and with appellant not making his required child-support and maintenance payments, respondent filed an affidavit of default and notice of intent to enter and docket judgment for appellant's unpaid child support, spousal maintenance, and property-settlement payment. In March 2012, and while the motions heard on November 29, 2011 were still under advisement, appellant filed a responsive motion requesting that the district court deny respondent's requests, and again requesting modification of his child support and spousal maintenance.

On March 7, 2012, the district court denied appellant's October 2011 motion to modify child support and spousal maintenance. The court observed that appellant's motion "consisted of a voluminous amount of material, and the majority of said material [was] highly unorganized argument and not in proper motion or affidavit form." The

[1] There were post-hearing submissions after the November 29, 2011 hearing and the record closed on December 9, 2011.

district court also concluded that appellant's motion sought to relitigate issues previously addressed in the court's September 2011 order following appellant's motion for amended findings, and that appellant was "attempting to take a third bite at the apple and once again mov[e] the Court [to] rethink or redo determinations made in the parties' Judgment and Decree." The district court noted that appellant's motion was an improper attempt at reconsideration that had not been approved by the court. The court found that appellant's reports of his own income were not credible, and it doubted the authenticity of documents provided by appellant to show his finances. In response to appellant's claim that he was unemployed, the court concluded that "[appellant] is self-employed . . . [and] [u]nless [appellant] fired himself or is seeking a different profession, he is still employed." The district court declined to modify appellant's child-support obligation "[b]ased upon [appellant]'s credibility issues and the absence of evidence establishing that [appellant]'s income has changed." The district court further found that appellant had "failed to prove a substantial change in circumstances that render[s] his current spousal maintenance obligation unreasonable or unfair." In response to respondent's request for attorney fees against appellant, the district court "decline[d] to award attorney's fees at this time, but if [he] continues on the path to excessive meritless legislation, the Court will award conduct-based attorney's fees at future hearings."

On March 8, 2012, the district court entered judgment against appellant for the property-settlement award of $5,585.39,[2] and on July 26, 2012, the court issued a writ of

[2] The judgment was entered for a total of $5,654.44, including "prejudgment interest and costs and disbursements."

execution for $5,795.96, which included interest and an execution fee. The Hennepin County Sheriff made a third-party levy on $4,678.57 in funds on deposit in appellant's Wells Fargo account in August 2012. Appellant claimed that the funds were exempt from levy, and respondent opposed appellant's claim of exemption, arguing that appellant had failed to provide evidence to support his claim of exemption. The district court declined to receive copies of bank statements and checks provided by appellant after the exemption motion hearing.

On August 30, 2012, the district court issued extensive and detailed findings of fact and order on the various motions of the parties. The court found that appellant owed $12,105.03 in spousal-maintenance arrearages, that respondent was entitled to judgment of $5,654.44 "for the parties' property settlement," that the levy on funds from appellant's Wells Fargo account was proper and that the funds were not exempt. It denied appellant's motion to modify his child-support and spousal-maintenance obligations because of appellant's failure to prove a substantial change of circumstances. The district court partially modified the child-support obligation to account for the emancipation of the parties' oldest child. This appeal followed.

D E C I S I O N

On appeal from the district court's August 2012 order, appellant appears to argue that the district court erred by (1) denying his most-recent motion to modify his child-support and spousal-maintenance obligations; (2) awarding respondent $5,585.39 to effectuate the previously ordered property division; (3) denying appellant's claim of

exemption with respect to respondent's levy on appellant's Wells Fargo account; and (4) awarding conduct-based attorney fees to respondent.

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 brief to this court neither articulates comprehensible legal arguments nor cites to relevant or persuasive legal authorities. Such failures generally result in a waiver 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 argues that the district court abused its discretion by denying his motion to modify his child-support and spousal-maintenance obligations. Whether to modify a child-support and spousal-maintenance obligation is within the district court's broad discretion and we will not alter that decision unless it was resolved in a manner that is against logic and the facts on the record. *Id.* at 347. We will affirm the district court's findings so long as "those findings have a reasonable basis in fact and are not clearly erroneous." *Ludwigson v. Ludwigson*, 642 N.W.2d 441, 446 (Minn. App. 2002) (quotation omitted). The party seeking modification of an existing child-support obligation has the burden of demonstrating both a substantial change in circumstances and the unfairness and unreasonableness of the order because of the change. *Bormann v.*

Bormann, 644 N.W.2d 478, 481 (Minn. App. 2002). We defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000); Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.")

In its August 2012 order, the district court addressed appellant's March 2012 motion to modify his child-support and spousal-maintenance obligations—his second such motion within five months, which was filed prematurely and before the district court had decided the earlier and nearly identical motion. The court found that appellant was simply repeating the same arguments for modification raised by his first motion to modify and that his arguments were unsupported by the record and were "illogical and not credible." In the March 7, 2012 order denying appellant's first motion to modify his child-support and spousal-maintenance obligations, the district court had found that "[appellant]'s credibility throughout the parties' dissolution proceedings ha[s] been lacking, and this post-decree motion hearing is no exception." The court repeated its credibility determination in the August 2012 order and found that it had already addressed and deemed incredible or unsubstantiated appellant's claims that he was unemployed and that respondent was voluntarily underemployed or unemployed. The district court characterized appellant's arguments as "undecipherable" and noted that appellant's arguments seemed to amount to an attempt to relitigate the parties' judgment and decree and the denial of his first motion to modify. At no time did appellant request reconsideration of the March 7, 2012 order under Minn. R. Gen. Practice 115.11. Thus, the district court refused to address appellant's arguments in the August 2012 order, and

they are not reviewable on appeal. *Thiele v. Stitch*, 425 N.W.2d 580, 582 (Minn. 1998) (stating that appellate courts do not address questions not presented to and considered by the district court). Even if the issues were properly before us on appeal, appellant has failed to meet his burden to show that the district court erred, and that the error was significantly prejudicial. *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that "unless the error is prejudicial, no grounds exist for reversal"); *Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949); *Wibbens v. Wibbens*, 379 N.W.2d 225, 227 (Minn. App. 1985).

II.

Appellant next contends that the district court abused its discretion by awarding respondent $5,585.39 to effectuate the marital-property division in the original judgment and decree. The district court has broad discretion when dividing marital property in a dissolution action and will not be reversed absent an abuse of that discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellant's arguments on this issue all relate back to the March 2011 judgment and decree and its award of a portion of the Wells Fargo account which appellant has consistently maintained was not a marital asset subject to division.

The district court had found in its September 2011 amended judgment and decree that the funds were marital property due to comingling of personal and corporate funds by appellant, who had consistently used the Wells Fargo account to pay for his family's personal expenses. Appellant did not appeal from either the March 2011 judgment and decree or the September 2011 amended judgment and decree. The resolution of the issue

raised in those prior judgments is therefore final. *See Mingen v. Mingen*, 679 N.W.2d 724, 727 (Minn. 2004); *Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370, 147 N.W.2d 100, 103 (1966).

By the time of the order from which appeal is taken, the district court was acting in furtherance of its authority to effectuate its own prior orders. It did not abuse its discretion by its subsequent orders including that of August 2012.

III.

Appellant further challenges the district court's decision to affirm a levy on funds that appellant owed respondent as part of the property division. Appellant argues that the district court "refuse[d] to acknowledge that the funds levied from the Wells Fargo checking account are exempt." But the district court found that appellant "failed to prove that the funds in question are monies paid to him for the damage or destruction of property, as it appears that the funds held in the escrow account were funds to secure the property for insurance purposes." Additionally, the court found that the money did not consist of exempt wages. The record amply supports the district court's rejection of appellant's exemption claims.[3]

[3] In fact, examination of the record shows that appellant claimed an exemption for the levied funds and provided respondent a telephone number for Old Republic National Title Insurance to confirm the source of funds. Appellant did not provide any evidence, such as copies of checks or bank-account statements, at the exemption hearing. The district court accepted as true the claim of respondent's counsel that counsel had called the number provided by appellant and learned that the money in the account not only was not exempt, but it was actually money escrowed as part of some other litigation involving appellant. The claims of exemption by reason of the funds being either wages or an insurance payment were definitively disproved, and the district court found that appellant had acted in bad faith in representing the funds to be other than what he knew them to be.

IV.

Appellant challenges the district court's decision to grant respondent's request for conduct-based attorney fees against appellant. A district court may, "in its discretion," award attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2012). The award of conduct-based attorney fees in a dissolution proceeding is reviewed for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

The district court awarded $1,000 in conduct-based attorney fees against appellant because appellant "unreasonably contributed to the length and expense of [the] proceeding" by relitigating issues in bad faith, by presenting the district court with serial motions on the topics of child support and maintenance (even making a second motion while a prior motion was still under advisement), and by repeatedly making unauthorized submissions and sending emails to the court without the court's permission and in violation of applicable court rules.[4] The record amply supports the district court's findings and the court did not abuse its discretion by awarding a very modest amount of attorney fees against appellant under the circumstances we see here.

Affirmed.

[4] The award was identified as being $500 attributable to the serial motions made in bad faith, and $500 attributable to the bad-faith exemption claim.