STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0838

In re the Marriage of: Rupam Sinha, petitioner,
Respondent,

vs.

Deepak Kademani,
Appellant.

Filed May 17, 2021
Affirmed in part, reversed in part, and remanded
Reilly, Judge

Hennepin County District Court
File No. 27-FA-17-7011

William R. Skolnick, Amy D. Joyce, Samuel M. Johnson, Skolnick & Joyce, P.A., Minneapolis, Minnesota (for respondent)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Brian L. Sobol, McGrann Shea Carnival Straughn & Lamb, Chartered, Minneapolis, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

In this contentious marital-dissolution dispute, appellant-husband and respondent-wife challenge multiple aspects of the district court's dissolution decree relating to the division of marital property, spousal maintenance, and the award of need-based and

conduct-based attorney fees. Appellant also challenges the district court's denial of his postjudgment motion and related award of conduct-based attorney fees to wife. We affirm most of the district court's decisions. But, we reverse and remand for the district court to divide appellant's 2017 bonus equitably between the parties, and we reverse the award of conduct-based fees against appellant resulting from the denial of his postjudgment motion.

FACTS

Appellant Dr. Deepak Kademani (husband) and respondent Dr. Rupam Sinha (wife) married in 1998. They had two children together, one of whom was a minor at the time of the dissolution. Wife petitioned for dissolution of marriage in October 2017. The district court held the dissolution trial over the course of four days in June and July 2019. In October 2019, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree, which dissolved the parties' marriage. The district court later issued amended findings of fact and conclusions of law in May 2020.[1]

The district court considered the parties' marital and nonmarital assets, and it divided the marital property between the parties. It awarded husband about $2.7 million in assets and wife about $1.9 million in assets, and it ordered husband to pay wife an equalizer payment of $400,470.20 to ensure an equal division. The district court awarded temporary spousal maintenance to wife, ordering husband to pay her $6,000 per month for the next four years. The district court also awarded payment of attorney fees on several

[1] Because of the number and complexity of the issues on appeal, we explain the evidence presented at trial and the district court's findings relating to each issue in greater detail in the decision section.

bases. It ordered husband to pay wife $100,000 in need-based fees and $15,590 in conduct-based fees.

After the district court issued its original judgment and decree in October 2019, husband brought a postjudgment motion in December 2019. The district court denied husband's motion and ordered him to pay conduct-based fees to wife, concluding that husband's motion was baseless and caused wife to incur additional attorney fees to respond to his motion.

Husband appeals from the district court's dissolution decree and from the denial of his postjudgment motion. Wife cross-appeals.

DECISION

Husband and wife each raise multiple arguments on appeal relating to various aspects of the district court's dissolution decree and postjudgment order. We have divided the parties' arguments into four categories: (1) the classification of property as marital or nonmarital, (2) spousal maintenance, (3) need-based and conduct-based attorney fees, and (4) the denial of husband's postjudgment motion.

I. Classification of Property as Marital or Nonmarital

Husband and wife both challenge the district court's division of property, arguing that the division was improper because the district court erred in its classification of certain assets as marital or nonmarital.

"All property acquired by either spouse subsequent to the marriage and before the valuation date is presumed to be marital property, regardless of whether title is held individually or by the spouses in a form of co-ownership." Minn. Stat. § 518.003, subd. 3b

(2020). Nonmarital property includes property acquired by either spouse before the marriage. *Id*., subd. 3b(b). It also includes property acquired before, during, or after marriage that is "acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse." *Id.*, subd. 3b(a). For a party to overcome the presumption that property acquired during the marriage is marital, the party must prove that the property in question is nonmarital by a preponderance of the evidence. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). Whether property is marital or nonmarital is a question of law, which we review de novo. *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018). But we defer to the district court's underlying factual findings and will not set them aside unless they are clearly erroneous. *Id.*

The parties make these arguments: (A) husband argues that the district court erred by classifying as marital property two bank accounts and a condominium bought with funds from one of the accounts; (B) husband argues that the district court erred by classifying as nonmarital property a flat in Birmingham, England, that wife kept during the marriage; and (C) wife argues that the district court erred by classifying husband's 2017 bonus as nonmarital. We examine each argument in turn.

A. The district court did not err by classifying the funds in husband's two Fidelity bank accounts and a condominium bought using funds from one of the accounts as marital property.

First, husband argues that the district court improperly classified funds in two Fidelity bank accounts (ending in 6320 and 5237) and a condominium (unit 1513) as marital property. Husband maintains that these assets belonged to husband's father and that the district court therefore erred by dividing them between the parties.

The two Fidelity accounts were titled in the names of husband and his father as joint account holders. Husband's father testified about his bank accounts generally, saying that, despite husband's name being listed on some of the accounts, husband never put money into any of the accounts and did not have an interest in them. Husband's father said that he added his children's names to the bank accounts for estate-planning purposes. As for the two Fidelity accounts, husband introduced a document prepared by a financial-services company showing that husband's father, rather than husband, made all deposits and withdrawals. The condominium was bought in September 2017 using funds from one of the Fidelity accounts. According to husband, his parents bought the condominium for him after he separated from wife. Husband lived in the condominium and paid his parents rent. Husband testified that his parents owned unit 1513, but that he later bought an adjacent unit with his own funds and combined the two into a single unit.

While the district court found that funds in some of the bank accounts held by husband and his father were nonmarital property, the district court found that the funds in the two Fidelity accounts were marital property. In reaching this conclusion, the district court reasoned that husband opened the accounts during the marriage and was listed as the primary account holder, and that income from the accounts was listed on husband and wife's tax returns. Although husband's father was the source of the funds, the district court determined that the funds were a gift and that husband failed to show that the accounts were a gift to husband alone, rather than to both husband and wife. The district court rejected husband's testimony that the accounts were listed on the tax returns by mistake, finding the testimony not credible. Likewise, the district court determined that the

condominium was also marital property because husband used funds from one of the accounts to buy the condominium.

We first address the proper framing of the issue on appeal. The district court determined that, because the accounts were opened during the marriage, husband bore the burden to prove that the funds in the accounts were nonmarital. Husband, however, urges us to apply a different standard. He maintains that the two accounts belong to husband's father. Citing Minn. Stat. § 524.6-203(a) (2020), husband argues that, because husband's father deposited all the funds into the accounts, the funds belonged entirely to him, and wife had the burden to show clear and convincing evidence of a different intent. But husband did not make this argument before the district court, either in his posttrial memorandum or in his motion for amended findings. Issues that were not presented to and considered by the district court are not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Nor, on appeal, may a party raise "the same general issue litigated below but on a different theory." *Id.* Here, while husband did argue to the district court that the funds in the accounts belonged to his father, he did not present this argument based on Minn. Stat. § 524.6-203(a), nor did he argue that wife needed to show clear and convincing evidence of a different intent by husband's father. And the district court did not "consider" husband's argument on the theory he now argues on appeal. Thus, this question is not properly before us, and we will not consider husband's theory for the first time on appeal.

Instead, we analyze the issue using the same framework as the district court. We must accept the district court's finding that the funds in the two accounts were a gift from

husband's father and, as such, were husband's property. The question is therefore whether the accounts were husband's marital or nonmarital property. The record shows that husband opened the accounts in 2013 or 2014, which was during the marriage. Because husband acquired the accounts during the marriage, they are presumptively marital property. Minn. Stat. § 518.003, subd. 3b. This means that husband bore the burden to prove that the funds in the accounts were nonmarital by a preponderance of the evidence. *Olsen*, 562 N.W.2d at 800.

We conclude that several facts in the record support the district court's determination that husband failed to rebut the presumption that the funds in the accounts were marital property. Husband was the one who opened the accounts, and he was listed as the primary account holder. Wife testified that husband controlled many of the financial aspects of the marriage. And funds from one of the accounts were used to buy the condominium that husband moved into after separating from wife. Moreover, husband and wife listed income from the two accounts on their tax returns from 2014 to 2017. Wife presented evidence further showing that husband's father did *not* pay taxes on income from the Fidelity accounts for 2016 or 2017. While we recognize that tax returns are not determinative as to ownership of an account, they are useful here because the district court heard evidence about husband's care in preparing his tax returns. During a pretrial deposition, husband stated, "If they're reported on our accounts, I would imagine that they're our funds." Husband also said that, if there were accounts in other people's names, he would not list them on his tax returns. The evidence showing that the parties treated the

funds in their accounts as belonging to them supports the district court's determination that the funds were marital property.

In affirming the district court's finding, we emphasize the district court's superior position to weigh the evidence and judge the credibility of witnesses. Although husband presented testimony at trial to support his assertion that the funds in the accounts were intended for husband's father, the district court rejected this testimony as not credible. And we defer to the district court on matters of witness credibility. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). We add that, while the district court found the funds in the two Fidelity accounts to be marital property, it found that funds in other bank accounts held jointly by husband and his father were *not* marital property. We therefore are satisfied that the district court did not blindly assume that the funds in the Fidelity accounts were marital property simply because husband's name was listed on the accounts. Rather, the district court carefully considered the evidence and came to its decision based on facts particular to those two accounts. Thus, we conclude that the district court did not err by classifying the funds in the two Fidelity accounts as marital property.

We likewise reject husband's argument that the district court erred by classifying the condominium as marital property. Husband does not dispute that the condominium was bought using $556,000 in funds from one of the Fidelity accounts. Assets bought with marital property are also marital property. *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 860 (Minn. 2003). Because the funds in the accounts are marital property, then the condominium is also marital property. For these reasons, we conclude that the district

court did not err by classifying either the funds in the two Fidelity accounts or the condominium as marital property and including them in the division of property.

B. The district court did not err by classifying wife's Birmingham flat and rental income from the flat as her nonmarital property.

Husband next argues that the district court erred by classifying wife's flat in Birmingham, England, as her nonmarital property. The district court classified the flat as wife's nonmarital property because wife bought the flat before the marriage and there was no evidence that she managed the flat or received income from it during the marriage.

Wife testified that she bought the flat in 1996 or 1997, which was before the parties married. She said that she bought the flat with funds from her father and that she lived there only briefly. Because wife acquired the flat before the marriage, the flat is nonmarital property. *See* Minn. Stat. § 518.003, subd. 3b(b). Husband argues, however, that the flat should be considered a marital asset because wife earned income from the flat during the marriage. Husband correctly notes that, generally, income from a nonmarital asset that is earned during the marriage is marital property. *Wiegers v. Wiegers*, 467 N.W.2d 342, 344 (Minn. App. 1991). Thus, the income earned from the flat during the marriage was presumptively marital property, and wife bore the burden to rebut this presumption by a preponderance of the evidence. *See Olsen*, 562 N.W.2d at 800. In classifying the income from the flat as nonmarital property, the district court apparently determined, albeit implicitly, that wife rebutted the presumption. The record supports the district court's implicit findings on this matter. *See Vettleson v. Special Sch. Dist. No. 1,* 361 N.W.2d 425, 428 (Minn. App. 1985) (reviewing implicit findings of fact for clear error).

Wife testified that she owned the flat for many years but did not pay rent, make payments towards the mortgage, or pay for utilities. She did not receive income from renters who lived in the flat, nor did she list the property as an asset on her tax returns. Wife's brother testified that he managed the flat after wife came to the United States and that wife gave him power of attorney over her interests that she owned in the United Kingdom. The brother said that he made payments on the mortgage for the flat using either his own funds or his father's. He also testified that he collected rent payments from various renters of the flat. He denied receiving funds from wife for any of the payments and maintained that he never sent her any income he received from the flat. The brother insisted that wife "had nothing to do with the property." Wife transferred the property out of her name in October 2016.

The testimony of wife and her brother support the district court's findings that wife made no payments towards the flat during the marriage and that she did not receive any income from it. Their testimony suggested that, despite wife's ownership of the flat, wife had virtually no connection to the flat during the marriage. The district court credited the testimony of wife and her brother on this point, and we defer to the district court's credibility determinations. *Sefkow*, 427 N.W.2d at 210. Based on this evidence, the district court could conclude that wife had sufficiently rebutted the presumption that any income earned from the flat was marital property. The district court therefore did not err by classifying the Birmingham flat and rental income as nonmarital property.

C. The district court erred by failing to include husband's 2017 bonus as a marital asset to be divided between the parties.

Wife argues that the district court erred by not classifying husband's 2017 year-end bonus as marital property. We agree that husband's bonus should have been classified as a marital asset and included in the division of the marital estate.

Following the district court's issuance of the original dissolution decree, wife moved for amended findings in December 2019 in which she argued, among other things, that husband received a bonus of $86,721.35 in 2018 for work that he performed in 2017. Wife argued that the district court failed to include the bonus in the division of property and urged the court to amend its decree to divide the bonus equally between the parties. The district court denied wife's request for amended findings on this issue, reasoning that no "specific testimony" was offered about the 2017 bonus and that the evidence wife cited did not show that husband received a bonus. The district court therefore declined to amend its dissolution decree to include husband's bonus in the division of property.

We conclude that the district court clearly erred in this finding. Wife submitted a pay stub that husband received on February 23, 2018, showing that husband earned $169,958 in additional pay. This amount was marked as "Phys Incentive." Wife also submitted husband's Wells Fargo banking statement showing that husband deposited $86,721.35 into his checking account on the same day. In fact, the district court acknowledged the existence of the bonus in other parts of its dissolution decree, finding, for spousal-maintenance purposes, that husband "earned $86,721.35 in bonuses for the calendar year of 2017." And, at oral argument, husband's counsel candidly acknowledged

that husband was paid the bonus. Consistent with the parties' understanding, we conclude that the record established that husband received a bonus of $86,721.35 in February 2018 based on his work in 2017. The district court's finding to the contrary was clearly erroneous.

Having determined that the district court erred by finding that insufficient evidence proved that husband was paid a bonus, we now turn to whether the bonus should be included in the marital estate. We conclude that it should. The district court is to value marital assets for the purpose of division between the parties based on a set valuation date. Minn. Stat. § 518.58, subd. 1 (2020). And property acquired before the valuation date is presumptively marital property. Minn. Stat. § 518.003, subd. 3b. Here, the district court set a valuation date of December 31, 2017. Although husband received the bonus in February 2018, it depended on his work for 2017. Because it was in 2017 that husband performed the work that earned him the bonus, we believe the bonus should be considered acquired during the marriage and therefore subject to division.

We are not persuaded otherwise by husband's contention that, because the district court already accounted for the bonus when determining husband's ability to pay spousal maintenance, it would be improper to include the bonus as marital property subject to division. The district court did not include husband's bonus in his gross income when determining spousal maintenance in the dissolution decree. Instead, husband's argument is based on the district court's spousal-maintenance calculation in the 2018 temporary-spousal-maintenance order. And in that order, the district court considered husband's bonus when determining that husband had the ability to pay spousal maintenance based on

his annual income of more than $600,000. The district court could have concluded that husband had ample ability to pay spousal maintenance no matter if it accounted for his bonus. We reject husband's argument that his bonus cannot now be treated as marital property.

For these reasons, we conclude that the district court erred by failing to include husband's 2017 bonus as a marital asset subject to division. We reverse this portion of the district court's decision, and we remand with instructions for the district court to divide the $86,721.35 bonus equitably between the parties after considering the relevant factors under Minn. Stat. § 518.58, subd. 1.[2]

II. Spousal Maintenance

Husband and wife both argue that the district court erred in certain aspects of its spousal-maintenance decision. The district court ordered husband to pay wife $6,000 per month in temporary spousal maintenance for four years. The district court reached this amount by imputing an annual gross income of $40,000 to wife for each of the next four years. After four years, the district court determined, wife should be able to increase her work hours and grow her dental practice so that she could earn a salary of $170,000.

We first address the appropriate standards for the district court's spousal-maintenance determination. Minn. Stat. § 518.552 (2020) governs spousal maintenance.

[2] Wife contends that husband's bonus should be valued at $107,073.54, which is the gross amount of his bonus before deductions. We disagree. Because the record reflects that husband received $86,721.35, and this was the amount the district court found for purposes of temporary spousal maintenance, we believe this is the appropriate amount to divide between the parties.

A district court may grant spousal maintenance if it finds that the spouse seeking maintenance satisfies one of two requirements: (1) she "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"; or (2) she "is unable to provide adequate self-support, after considering the standard of living established during the marriage and all relevant circumstances, through appropriate employment." Minn. Stat. § 518.552, subd. 1; *see also Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (providing that a maintenance award depends on a showing of need). If spousal maintenance is appropriate, the district court must set maintenance "in amounts and for periods of time, either temporary or permanent, as the court deems just," after considering several factors. *Id.*, subd. 2. The weighing of the factors essentially requires the district court to conduct "a balancing of the recipient's need against the obligor's ability to pay." *Prahl v. Prahl*, 627 N.W.2d 698, 702 (Minn. App. 2001) (citing *Erlandson v. Erlandson*, 318 N.W.2d 36, 39-40 (Minn. 1982)). We review a district court's award of spousal maintenance for an abuse of discretion. *Erlandson*, 318 N.W.2d at 38. And we review a district court's factual findings underlying a spousal-maintenance award for clear error. *Maiers v. Maiers*, 775 N.W.2d 666, 668 (Minn. App. 2009). With these standards in mind, we turn to the parties' arguments.

The parties urge this court to reverse the district court's spousal-maintenance award for four reasons: (A) husband argues that the district court understated wife's income; (B) wife argues that the district court overstated her income by ignoring tax implications; (C) wife argues that the district court understated her expenses; and (D) wife argues that

the district court should have granted her permanent maintenance instead of temporary maintenance. We conclude that none of the arguments are a basis for reversal.

A. The district court did not clearly err by imputing an annual income of $40,000 to wife for the next four years.

Husband argues that the district court abused its discretion by awarding wife $6,000 per month in temporary spousal maintenance. He maintains that the district court erred in its findings on wife's income. The district court imputed a gross income of $40,000 per year to wife, based on its findings that she was working only part time and that her income in each of the past ten years was no higher than $39,000. Husband argues that the district court should have calculated wife's income to be much higher than $40,000.

The trial testimony established these facts about wife's income. Wife worked as a dentist and owned her own dental clinic, Robbinsdale Dental, PLLC. According to wife, husband was heavily involved in the management of the clinic. When wife bought the clinic, it was open only two-and-a-half days a week, but at husband's insistence, it eventually increased to four days a week. Husband also worked sometimes at the clinic as an oral surgeon. Wife testified that husband made the financial decisions at the clinic, handled most of the accounting, and set wife's salary, although wife dealt with the bookkeeping and oversaw the office personnel. Wife also testified that, from 2010 to the time of the dissolution trial, she worked only two days a week. She claimed that her current gross annual income was $40,000. This was the amount reflected on the tax form 1125-E for Robbinsdale Dental as the compensation wife received for 2017. This evidence

supports the district court's finding that wife was earning $40,000 at the time of the dissolution trial and that this was a reasonable starting annual salary for her.

We are not persuaded that these findings are clearly erroneous by husband's contention that, based on Robbinsdale Dental's current revenues, wife should be able to earn an annual income of at least $200,000 immediately if she worked full time. When considering wife's eventual earning capacity, the district court reasoned that "it will take [wife] some time to increase her hours and expand her practice." The record supports the district court's concerns on this point. According to wife, husband made most of the financial decisions at the clinic. Wife also testified that the clinic benefitted from husband's oral-surgery practice, which was no longer a source of revenue after the parties' separation. While husband's vocational expert opined that wife had an earning capacity between $191,000 and $300,000 annually, the district court did not find this testimony credible. And we defer to the district court's credibility determinations. *Sefkow*, 427 N.W.2d at 210. The record evidence supports the district court's finding that it would take a few years for wife to increase her work hours and gain the necessary experience managing the clinic so that she could earn closer to $170,000 per year.

Husband also argues that the district court understated wife's income by refusing to attribute to wife the income earned by Robbinsdale Dental as a subchapter S corporation. The 2017 tax return for Robbinsdale Dental reflected that the business earned $20,851 in ordinary business income that year. Husband argues that, because the district court awarded wife 100% ownership of Robbinsdale Dental, it should have added the $20,851 of subchapter S income to wife's personal income of $40,000. The district court declined

to attribute this income to wife, reasoning that wife was not involved in the business operations at the clinic, and that it would not be "fair to determine Robbinsdale Dental's gross income in the future based on information as to its income when [husband] was running it."

We conclude that the district court acted within its discretion by not attributing the subchapter S income to wife. Husband correctly notes that a person's gross income includes income earned from the person's ownership of a subchapter S corporation. *Haefele v. Haefele*, 837 N.W.2d 703, 711 (Minn. 2013).[3] But, while the district court's maintenance analysis begins with the calculation of a spouse's gross income, the district court must also consider several spousal-maintenance factors, including the recipient's financial resources. *See* Minn. Stat. § 518.552, subd. 2(a). The district court's decision not to include the income from Robbinsdale Dental to wife was part of its consideration of wife's financial resources. And the record supports the district court's finding that husband was heavily involved in the operation of the business to wife's exclusion. We therefore see no error in the district court's decision not to include the $20,851 in subchapter S income as part of wife's income.

Finally, we reject husband's argument that the district court should have accounted for evidence showing that the parties deliberately kept wife's salary low to limit her tax obligations and that the parties transferred funds from Robbinsdale Dental to support their

[3] Although *Haefele* involved the calculation of gross income in the context of child support, the same definition of gross income applies to child support and spousal maintenance. *Lee v. Lee*, 775 N.W.2d 631, 635 n.5 (Minn. 2009).

retirement plans. Wife testified that husband was the one who set her salary. Husband now argues that her salary does not accurately reflect her true income. Given husband's manipulation of wife's income from the clinic, we see no impropriety in the district court calculating husband's spousal-maintenance obligation based on the income that he set for her during the marriage.

For these reasons, we conclude that the district court's findings regarding wife's income are not clearly erroneous, and that it did not err by setting wife's income at $40,000 per year for the first four years.

B. Any error in the district court's calculation of the tax implications of wife's income is de minimis.

Wife argues that the district court erred in calculating her income for spousal-maintenance purposes. She maintains that the district court miscalculated the tax implications when determining her income. The district court found that, based on wife's gross income of $40,000, she would have to pay $2,000 in federal and state taxes. The district court therefore imputed a net income of $38,000 to wife for spousal-maintenance purposes. Wife insists that her taxes amount to $2,601 and that the district court should have reduced her income by that amount instead of just $2,000.

Even if we accept wife's argument that her taxes totaled $2,601, we need not reverse the district court's spousal-maintenance determination. This court has declined to reverse and remand in marital-dissolution cases when the district court's error was de minimis and did not prejudice the parties. *See, e.g.*, *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 694 n.1 (Minn. App. 2010) (determining that an error was de minimis when the district court

inadvertently failed to address $400 when the land at issue was worth $99,900), *review denied* (Minn. Nov. 16, 2010); *Duffney v. Duffney*, 625 N.W.2d 839, 843 (Minn. App. 2001) (holding that the district court's failure to include $20 to $25 in the calculation of a party's monthly income was "de minimis and does not warrant a remand"). Here, the district court awarded wife $6,000 per month in spousal maintenance. The district court's alleged error was failing to subtract an additional $601 from wife's net annual income. This would create a difference of about $50 per month. Because this amount is a fraction of the total amount of maintenance wife receives per month, we believe that any error by the district court in calculating the tax implications of wife's income is de minimis. For these reasons, we decline to remand on this basis.

C. The district court did not abuse its discretion by reducing wife's monthly expenses.

Wife argues that the district court abused its discretion by reducing her monthly budget. At trial, wife presented a proposed monthly budget that included $12,059 in personal expenses. The district court found wife's budget unreasonable and reduced her personal expenses by $3,000 to reach a monthly budget of $9,059.

We see no abuse of discretion in the district court's decision.[4] The district court explained its rationale for finding some of wife's proposed expenses unreasonable: wife

[4] We note that a district court's determination of a party's expenses for purposes of spousal maintenance is typically a factual finding that we review for clear error. *See McCulloch v. McCulloch*, 435 N.W.2d 564, 566 (Minn. App. 1989) (recognizing that findings of fact underlying a spousal-maintenance decision "must be upheld unless clearly erroneous" (quotation omitted)). But because the district court reduced wife's expenses based on its determination that wife's proposed expenses were unreasonable, we will review that decision for an abuse of discretion.

did not provide receipts or other evidence showing that her need for those expenses were as high as she claimed. The district court reduced wife's expenses accordingly to an amount that it deemed reasonable. We observe that the district court did not arbitrarily limit wife's expenses, but based its decision on wife's failure to provide evidence supporting her claimed expenses. Thus, the district court did not abuse its discretion by reducing wife's monthly expenses.

D. The district court did not err by denying permanent spousal maintenance.

Wife argues that the district court erred by awarding temporary spousal maintenance, and she insists that it should have awarded permanent maintenance instead. The district court reasoned that permanent maintenance was unnecessary because wife was able to increase her income and could become self-supporting.

The spousal-maintenance statute provides the following directive on whether the district court is to set permanent or temporary spousal maintenance:

> Nothing in this section shall be construed to favor a temporary award of maintenance over a permanent award, where the factors under subdivision 2 justify a permanent award.
>
> Where there is some uncertainty as to the necessity of a permanent award, the court shall order a permanent award leaving its order open for later modification.

Minn. Stat. § 518.552, subd. 3. Wife contends that there is "substantial uncertainty regarding [her] ability to earn $170,000" within four years and that permanent maintenance is therefore appropriate. We disagree.

A review of relevant caselaw shows that whether temporary or permanent maintenance is appropriate depends heavily on the spouse's education, employment history, and other prospects of attaining suitable employment. In *Nardini v. Nardini*, the supreme court held that the wife was entitled to permanent maintenance when she had not been in the labor market for almost 30 years, had only a high school education, and possessed no special employment skills. 414 N.W.2d 184, 197 (Minn. 1987). In contrast, this court in *Aaker v. Aaker* determined that the district court did not err by awarding temporary rather than permanent maintenance. 447 N.W.2d 607, 611 (Minn. App. 1989), *review denied* (Minn. Jan. 12, 1990). In reaching this conclusion, this court highlighted that the wife was only 39 years old, she had a bachelor's degree and could obtain another degree in business within the next three years, and the evidence showed that she could obtain a comfortable entry-level salary once she obtained her degree, with a likelihood that her salary would increase afterwards. *Id.*

Here, we believe that wife's situation is more like that in *Aaker* than in *Nardini*. Wife is well educated, having obtained a Bachelor of Dental Surgery and completed a Doctor of Dental Medicine. She worked as a dentist continually throughout the marriage. Even under the figures provided by wife's own vocational expert, she was expected to be capable of earning up to $170,000 per year within a few years. This income figure reflected the amount wife earned for some years in the mid-2000s, before she bought Robbinsdale Dental. Given wife's education, ownership of a dental clinic, and past job experience, there was ample support for the district court's determination that wife could become fully self-supporting and attain an annual income of $170,000 soon. Because the record supports the

district court's finding that wife could increase her income significantly in a few years, the district court did not err by rejecting wife's request for permanent maintenance and awarding temporary spousal maintenance instead.

III. Need-Based and Conduct-Based Attorney Fees

Husband argues that the district court abused its discretion by awarding attorney fees to wife. The district court ordered husband to pay $100,000 to wife in need-based attorney fees, and $15,590 to wife in conduct-based attorney fees. Husband challenges three of the district court's attorney-fee awards: (A) the award of need-based fees, (B) the award of conduct-based fees resulting from the trial extending to a fourth day, and (C) the award of conduct-based fees relating to husband's 2018 pretrial motion to amend the temporary maintenance order.[5] We conclude that none of the attorney-fee awards constitute an abuse of discretion.

A. The district court did not abuse its discretion by ordering husband to pay $100,000 in need-based attorney fees.

Husband first argues that the district court abused its discretion by awarding wife need-based attorney fees. The district court ordered $100,000 in need-based fees, concluding that husband had the ability to pay this amount of wife's attorney fees. Although wife requested about $375,000 in attorney fees, the district court declined to order husband to pay all of her attorney fees.

[5] The district court's award of $15,590 in conduct-based fees was based on several grounds, but husband challenges only two grounds on appeal.

A district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding" if it finds that three elements are met: (1) "that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;" (2) that the party from whom fees are sought "has the means to pay them;" and (3) that the party seeking fees "does not have the means to pay them." Minn. Stat. § 518.14, subd. 1 (2020). We review a district court's decision whether to award attorney fees for an abuse of discretion. *Kielley v. Kielley*, 674 N.W.2d 770, 780 (Minn. App. 2004). A district court abuses its discretion if its decision contradicts logic or the facts in the record. *Id.* at 775.

Husband challenges only the third element of the statute, that the recipient lacks the means to pay attorney fees. His argument is based largely on the same assertion he made about spousal maintenance—that wife's income is greater than the $40,000 that the district court imputed to her. As explained above, the record supports the district court's determination that wife's income will be $40,000 for the next four years, until she has time to build up her dental practice. We therefore reject husband's argument that wife had the means to pay her attorney fees for the same reason.

Husband also maintains that the district court did not account for the $400,000 equalizer payment that wife received from husband. We disagree with this characterization of the district court's decision. Although the district court did not specifically mention the equalizer payment, it recognized that "[b]ased upon the division of assets in this dissolution, each party shall be receiving significant cash and assets." And the district

court determined that husband did not have the ability to pay *all* of wife's attorney fees, so it instead ordered him to pay just a portion of the fees. Based on these considerations, we are satisfied that the district court appropriately accounted for the assets that each party would receive in the dissolution. The district court did not abuse its discretion by awarding wife need-based attorney fees.

B. The district court did not abuse its discretion by ordering husband to pay conduct-based attorney fees because there was a fourth day of trial.

Husband argues that the district court abused its discretion by awarding wife $10,375 in conduct-based attorney fees that she incurred in preparing for and attending the fourth day of trial.

Under Minn. Stat. § 518.14, subd. 1, "Nothing in this section . . . precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding."[6] The party seeking conduct-based fees has the burden to show that the other party unreasonably increased the length or expense of the proceeding. *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016). We review a district court's award of conduct-based fees for an abuse of discretion. *Sharp v. Bilbro*, 614 N.W.2d 260, 264 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000). A district court abuses its discretion if its decision is against logic and the facts in the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997).

[6] Neither party challenges whether Minn. Stat. § 518.14 provides a substantive basis for an award of conduct-based attorney fees, given the supreme court's order in *Anderson v. Anderson*, No. A16-2006 (Minn. Aug. 6, 2018) (order). For purposes of this appeal, we assume without deciding that the statute provides a proper basis for the award. *See Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019) (taking this approach).

In awarding conduct-based fees due to the trial extending to a fourth day, the district court noted that the order for trial provided that the trial would last three days and that each party would be allowed half of the time allotted to present their case. The district court found that husband's counsel used the majority of the time during the first three days of trial and that it had reminded counsel to watch their time many times. For these reasons, the district court found that conduct-based fees against husband were appropriate.

The record supports the district court's findings that husband was largely responsible for the need for a fourth day of trial. The district court told the parties at the outset that they would have the chance to file proposed findings of fact and conclusions of law with the court, and it urged them to focus on the evidence that they believed needed to come in during the trial. The district court reminded husband's counsel of this fact in the middle of the trial, and it suggested that his line of questioning "may not have been a prudent use of one's time." On the second day of trial, the district court noted that husband's counsel had used four hours of time, while wife's counsel had used only one-and-a-half hours. After the third day, husband's counsel had used almost ten hours, compared to just over five hours by wife's counsel—nearly twice as much time, despite the district court's directive that the parties were to split their time evenly. While husband contends that wife's counsel dominated the trial time on the fourth day of trial, the proper focus before the district court was whether a fourth day was necessary in the first place. Moreover, as wife points out, husband's counsel could have saved trial time in several ways, such as by stipulating to the admission of certain exhibits before trial, as he ended up not objecting to those exhibits during trial. We are satisfied that the record supports the

district court's finding that husband's counsel's actions unnecessarily increased the length of trial and contributed to the need for a fourth day.

We are not persuaded otherwise by husband's suggestion that the trial presentation was stymied by the district court's imposition of time limits. The district court did not cut off witnesses or prevent the parties from introducing evidence. Rather, it merely reminded the parties to use their time reasonably. "Rulings on . . . the conduct of trial are left to the discretion of the [district] court and will not be reversed absent an abuse of discretion." *Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995), *review denied* (Minn. May 31, 1995). We believe that the district court's setting the trial for three days was a reasonable method of ensuring efficiency and that this limitation did not unfairly prevent the parties from presenting necessary evidence to the court.

In affirming the district court's award of conduct-based fees, we recognize that this was a complex case that necessarily required time for the parties to introduce extensive evidence to prove their cases. Based on our review of the record, it does not appear that husband's counsel acted in bad faith at trial or was trying to cause delays. But it is unnecessary to show that a party acted in bad faith before a district court may award conduct-based fees. *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001). Rather, wife needed to show only that husband's failure to use his trial time efficiently unreasonably contributed to the length of the proceeding. *See Baertsch*, 886 N.W.2d at 238. The district court was in a better position than we are to judge how the parties used their respective time at trial and whether husband's actions necessitated a fourth day of

trial. Because of the district court's discretion on this matter, we do not find that the district court's award of conduct-based fees on this basis was improper.

C. The district court did not abuse its discretion by ordering husband to pay conduct-based attorney fees because of his unsuccessful pretrial motion to amend the 2018 temporary spousal maintenance order.

Husband also argues that the district court abused its discretion by awarding wife $3,240 in conduct-based attorney fees relating to his pretrial motion to amend the district court's temporary maintenance and child support order. Husband maintains that his 2018 motion was proper and that the district court should not have awarded conduct-based fees just because the motion did not succeed.

The motion at issue was husband's pretrial motion asking the district court to amend its findings in the July 25, 2018 temporary maintenance and child support order. The district court denied that motion. In doing so, the district court reasoned that husband failed to meet the standards for amendment and that the motion, in substance, was one for reconsideration because husband merely reargued his position based on the same evidence. In the dissolution decree, the district court cited these reasons as the basis for awarding conduct-based fees.

The record shows that husband's 2018 motion pointed to several specific findings that it asked the district court to amend. But the motion largely rehashed the same arguments husband made originally. Thus, the district court accurately characterized the substance of husband's motion as one for reconsideration. And the district court correctly noted that husband did not follow the proper procedures for a motion for reconsideration. *See* Minn. R. Gen. Prac. 115.11 (providing that a party may make a motion to reconsider

only with the district court's express permission). Although husband insists that his motion to amend was proper because it alleged an error on the district court's part in awarding retroactive maintenance, we note that the retroactivity argument was a small part of husband's motion. The majority of the motion asked the district court to reconsider arguments that it had rejected before, meaning that most of the motion was functionally a motion to reconsider. The nominal reference to the question of retroactivity did not render the motion proper.

Because the district court did not err by determining that husband's 2018 motion failed to meet the proper standard for amendment, we see no abuse of discretion in the district court awarding conduct-based fees for this reason. A district court may award conduct-based fees when a party brings frivolous or bad-faith claims. *Baertsch*, 886 N.W.2d at 239. Husband's 2018 motion was not merely unsuccessful; most of it was a procedurally improper attempt to reargue questions husband had already lost. And the motion contributed to the length and expense of the proceedings by requiring wife to respond to the motion and the district court to address it. We therefore conclude that the district court did not abuse its discretion by awarding conduct-based attorney fees because of husband's improper motion to amend the temporary maintenance order.

IV. Denial of Postjudgment Motion and Award of Conduct-Based Fees

Finally, husband challenges the district court's denial of his postjudgment motion. Husband filed the motion in December 2019, asking the district court to hold wife in contempt and to reopen the record. The district court denied husband's motion in an April 13, 2020 order. The district court also granted wife's request to award conduct-based

attorney fees that wife incurred in responding to his motion. Husband challenges three aspects of the district court's order: (A) the denial of the motion to hold wife in contempt, (B) the denial of the motion to reopen the record, and (C) the award of conduct-based fees. We address each argument in turn.

A. The district court did not err by denying husband's motion for contempt, despite its legal error regarding the need to seek an order to show cause.

Husband first argues that the district court erroneously denied his motion to hold wife in contempt. We agree with husband that the district court committed an error of law when denying his motion. But we affirm the district court's decision because its denial of the contempt motion can rest on an alternative ground.

Husband's motion asked the district court to hold wife "in Contempt of Court for failing to meet her responsibility of getting the parties' minor child to weekly visits," in violation of the dissolution decree. Husband submitted an affidavit stating that the child had missed all her weekly visits and maintaining that wife was refusing to support his relationship with the child. In denying husband's motion for contempt, the district court noted that husband did not specify whether the motion was for criminal or civil contempt, and he failed to cite relevant statutes. The district court reasoned that, even if it construed husband's motion as seeking constructive civil contempt, husband failed to follow statutory procedures because he did not seek an order to show cause.

Husband argues that the district court misapplied the law by determining that his contempt motion was procedurally defective for his failure to seek an order to show cause. Assuming, as the district court did, that husband's motion was for constructive civil

contempt, we agree that the district court erred in its application of the law. The statute governing constructive contempt provides that "the court or officer" may bring the alleged contemnor to answer "upon notice, *or* upon an order to show cause." Minn. Stat. § 588.04(a) (2020) (emphasis added). Likewise, the general rules of practice allow contempt proceedings to be "initiated by notice of motion and motion *or* by an order to show cause." Minn. R. Gen. Prac. 309.01(a) (emphasis added). The district court therefore erred by concluding that husband was required to seek an order to show cause.[7]

Despite the district court's erroneous application of the law, we do not believe that the error requires reversal because the district court provided other reasons for denying husband's motion. The district court found that wife "provided credible information, corroborated by therapists . . . that she is doing the best she can to encourage [the child] to attend parenting time with [husband] and that any failure to attend parenting time on [the child's] behalf, is not 'willful disobedience' or 'resistance willfully offered.'" The evidence provided at the motion hearing and in wife's declaration supports this finding. And husband's affidavit in support of his motion provided meager allegations, saying only that the child had missed her scheduled visitations and generally attributing this behavior to wife. We therefore affirm the district court's denial of husband's motion for contempt,

[7] Wife maintains that husband conceded at the motion hearing that he was required to seek an order to show cause. We do not believe this accurately characterizes the statements made by husband's counsel at the motion hearing. Although husband's counsel did not dispute that he did not bring an order to show cause, he took the same position that he does on appeal—that an order to show cause is not necessary for a party to initiate contempt proceedings.

despite the district court's legal error. *See* Minn. R. Civ. P. 61 (requiring courts to ignore harmless error).

B. The district court did not abuse its discretion by denying husband's motion to reopen the record.

Husband also argues that the district court abused its discretion when it denied his motion to reopen the record. Husband asked the district court to reopen the record to allow him to introduce evidence about the ownership of the condominium (unit 1513) that the district court classified as marital property, as well as evidence about the costs of health insurance for the children. The district court denied the motion, reasoning that husband had ample opportunity to introduce the relevant evidence at trial.

The district court may relieve a party from a judgment and decree for one of several reasons, including "mistake, inadvertence, surprise, or excusable neglect." Minn. Stat. § 518.145, subd. 2(1) (2020). The party moving to reopen a judgment and decree bears the burden of proof and must prove at least one of the statutory grounds by a preponderance of the evidence. *Knapp v. Knapp*, 883 N.W.2d 833, 835 (Minn. App. 2016). We review a district court's decision not to reopen a judgment and decree for an abuse of discretion. *Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996).

Husband asked the district court to reopen the record based mainly on the ground of surprise. Although Minnesota caselaw has not defined "surprise" in the context of a motion to reopen the record, one definition is "[a]n occurrence for which there is no adequate warning or that affects someone in an unexpected way." *Black's Law Dictionary* 1672 (10th ed. 2014). The record supports the district court's determination that husband did

not make an adequate showing of surprise. Husband knew that the Fidelity accounts (from which funds were taken to buy the condominium) would be at issue, given that wife listed the application and accounts statements as exhibits on her trial exhibit list. And caselaw is clear that the proceeds of marital property are also marital property. *Gill*, 919 N.W.2d at 303. Here, husband introduced evidence at trial about both the Fidelity accounts and the condominium. Husband therefore had adequate warning that wife would likely argue the marital character of the Fidelity accounts and the resulting character of the condominium bought with funds from one account, and he had the opportunity at trial to present evidence to oppose wife's claims. As the district court pointed out, husband's assertion that he was surprised that the district court found that the condominium belonged to him was merely a statement that he was surprised at the outcome of the proceeding, not that he did not have adequate warning that this would be an issue at trial.

Additionally, husband's request to introduce more evidence about healthcare costs for the children appears to have been simply an attempt to provide evidence that he did not adequately cover at trial. The statute does not allow a district court to reopen the record merely so that a party can seek a mulligan on issues that the district court decided against that party originally. We see no error in the district court's determination that husband did not make an adequate showing of surprise so as to justify reopening the record. For these reasons, we conclude that the district court did not abuse its discretion by denying husband's motion to reopen the record.

C. The district court abused its discretion by awarding $9,569 in conduct-based attorney fees based on the denial of husband's postjudgment motion.

Finally, husband argues that the district court abused its discretion by awarding conduct-based attorney fees when denying his postjudgment motion. The district court ordered husband to pay wife $9,569 in conduct-based fees.

As for the denial of husband's motion for contempt, the district court's reason for granting conduct-based fees was that "he failed to follow statutory procedure." As explained above, this determination was legally erroneous. And even though we affirm the denial of the motion for contempt on the alternative basis explained above, we observe that the district court's sole reason for awarding conduct-based fees was because of his failure to file an order to show cause. Because the district court's attorney-fee award rested on an error of law, we conclude that it was an abuse of discretion. *See Sinda v. Sinda*, 949 N.W.2d 170, 175 (Minn. App. 2020) (noting that a district court abuses its discretion if it misapplies the law).

While we do not necessarily see any abuse of discretion in the district court's award of conduct-based fees relating to husband's motion to reopen the record, we note that the district court did not differentiate between the fees wife incurred responding to husband's request to hold wife in contempt and his request to reopen the record. Nor do the submissions by wife's counsel in support of wife's motion for conduct-based fees delineate between the expenses related to each of husband's arguments. For these reasons, we

reverse the district court's entire award of $9,569 in conduct-based attorney fees to wife arising from the denial of husband's postjudgment motion.

Affirmed in part, reversed in part, and remanded.