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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-102**

In re the Marriage of:
Bonnie Vivian Engle, petitioner,
Respondent,

vs.

Joseph William Engle,
Appellant.

**Filed July 6, 2010
Affirmed
Halbrooks, Judge**

Todd County District Court
File No. 77-F7-04-000775

Lynne M. Ridgway, St. Cloud, Minnesota (for respondent)

Michael G. Blee, St. Cloud, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's denial of his motion to enforce the dissolution judgment and for damages and the district court's award of conduct-based attorney fees to respondent. Because the district court's findings of fact are not clearly

erroneous and because its conclusions of law are supported by the findings of fact, we conclude that the district court acted within its discretion. We affirm.

FACTS

In April 2004, respondent Bonnie Vivian Engle (wife) obtained an order for protection against appellant Joseph William Engle (husband) and petitioned for the dissolution of their more than 30-year marriage. In March 2006, following what appears to have been a contentious process, the parties entered into a settlement agreement. Certain items of personal property were specifically awarded to each party in the settlement agreement. The remaining personal property was to be sold at an auction, with the proceeds to be split evenly between the parties.

In May 2006, husband moved to vacate the settlement agreement, claiming it was not an equitable distribution of assets and that he did not understand the agreement when he entered into it. Wife moved to enforce the agreement and for attorney fees. As part of his motion to vacate the settlement, husband submitted an affidavit that included a proposed equitable division of assets. In his affidavit, husband alleged that the property division under the settlement resulted in an award to wife of assets valued at \$466,450 and that the assets awarded to him were worth only \$389,200. He reached his asset valuation by valuing the personal property awarded to him under the settlement—a Camaro (\$10,000), a motorcycle (\$1,800), all of his tools and tool boxes (\$8,500), a Suburban (\$1,000), a Jeep (\$500), and “various personal property” (\$5,000)—at \$26,800. To correct this alleged inequity, he “request[ed] that all the vehicles and equipment stored in the sheds, the depot and outside on the property and up at [the parties’ son]’s farm” be

awarded to him. He claimed that this property “together with the personal property [he] would receive under the settlement [agreement], [was] worth approximately \$50,000.” Husband also requested \$18,400 in stocks and his 401(k) to allegedly balance the division of assets between the parties. His motion was denied.

In April 2007, wife’s motion to enforce the settlement agreement was granted, and a dissolution judgment memorializing the terms of the settlement agreement was entered—which was not appealed. The auction agreed to by the parties was held on June 29, 2007, and grossed approximately \$40,000, which netted the parties approximately \$13,000 each. Husband was present at the auction, reviewed the inventory prior to the sale, and did not bid on any of the items.

Following the auction, husband moved to enforce the judgment and for damages. He claimed that the items sold at the auction included items that he was specifically awarded in the settlement agreement and that the auction did not include all of the personal property available for sale. Wife opposed the motion and moved for conduct-based attorney fees.

The district court held an evidentiary hearing on the motions in August 2008. The district court heard testimony from Kevin Winter, the auctioneer who performed the auction, three of the parties’ adult children, husband, and wife. Husband testified that his damages included one-half of the value of the personal property that was not included in the auction but should have been. He testified that he did not know where this allegedly

missing property was located, but he estimated its total value at \$120,000.¹ Husband also testified that certain items of personal property that had been awarded to him in the property division were sold at the auction. He specifically identified Craftsman and Snap-on tools and two trailers that he claimed had been improperly included in the auction. He estimated that the replacement cost for this wrongfully sold property was \$50,000.

After hearing the testimony and finding that husband's testimony lacked credibility and that the other witnesses' testimony was credible, the district court denied husband's motion. The district court found that (except for the two trailers) none of the personal property specifically awarded to husband in the dissolution was intentionally sold at the auction and that there was not sufficient evidence to show that any property that should have been included in the auction was intentionally excluded. With respect to the trailers, the district court found that they were "inappropriately awarded" to husband because they belonged to Brent Engle, the parties' son. The district court went on to conclude that

[w]hile the trailers arguably should not have been sold at the auction . . . it is understandable that they were, considering that they were included in the auction by the party to whom they belonged. [Husband] had an opportunity to inspect the goods to be sold prior to the auction and made no objection to the inclusion of the two trailers.

¹ In support of this figure, but without attaching actual monetary values to the items, husband admitted into evidence a list of the items that he believed should have been included in the auction but were not. This list included more than 100 items or categories of items, almost all of which could fairly be classified as "vehicles and equipment."

The district court also found that wife was entitled to one-half of husband's auction proceeds as conduct-based attorney fees. This appeal follows.

DECISION

I.

Husband argues that the district court erred by determining that no marital property was intentionally withheld from the auction and that all of the personal property to which he was entitled was provided to him and not intentionally sold at the auction. This court will not overturn the district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App. 2007). Factual findings are clearly erroneous when they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985). "When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court's findings." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). "That the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Id.* at 474.

The district court based its finding that there was no intentional circumvention of the terms of the agreement on the testimony at the hearing. The district court specifically found that husband lacked credibility. Witness credibility is the province of the fact-finder. *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009). Appellate courts

give great deference to district court determinations of witness credibility. *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

Husband disputes the district court's use of his 2006 affidavit—in which he valued all of the “vehicles and equipment” owned by the couple at \$50,000—to assess his credibility. But the district court did not base its credibility determination solely on this 2006 affidavit. The district court also noted husband's “remaining silent at the time of the auction, . . . making no inquiry or objection except those noted above[,] [and] [h]is conduct with regard to his son's trailers.” The district court concluded that these actions also “call his credibility and good faith into question.” We disagree with husband's assertion that the district court was not entitled to rely on the 2006 affidavit to assess his credibility. But even if that assertion were true, any error in relying on the 2006 affidavit was harmless, based on the other indicia of credibility relied on by the district court.

Husband also argues that the district court should not have used the fact that he remained silent at the auction to assess his credibility. He claims that he was silent so as not to violate the order for protection in place. But this argument is undermined by the testimony of husband and the auctioneer that when husband identified some items of property before the auction that should not have been included, they were pulled out by the auctioneer. The district court was entitled to disregard husband's explanation as to why he remained silent and to use his behavior at the auction and his dishonesty about the ownership of the trailers to assess his credibility.

In addition, the testimony of the auctioneer, the parties' three children, and wife all support the district court's findings. The auctioneer testified that he walked through the

property with husband prior to the sale and that husband pointed out a few specific items that he had been awarded and should not be sold at the auction. But the auctioneer testified that husband did not assert that the two trailers should not be sold, nor did husband point out any tools that should not be sold. The adult children all testified that they did not take any personal property prior to the auction and that they meticulously separated the items that husband had been awarded in the settlement agreement. Brent Engle testified that he purchased the two trailers and provided cancelled checks in support of his testimony. The district court credited this testimony and concluded that husband was not entitled to the two trailers. The district court's findings therefore are not clearly erroneous, and the district court did not abuse its discretion when it denied husband's motion with respect to the \$120,000 in allegedly "missing" property or the \$50,000 it would cost husband to replace items allegedly sold at the auction.

II.

As previously noted, husband argues that the district court improperly relied on the affidavit that he submitted in 2006 in support of his motion to vacate the settlement agreement.² Husband first takes issue with the comparison of the \$50,000 affidavit figure to the \$170,000 figure referred to in his testimony, contending that this was an inaccurate comparison. After a thorough review of the record, we understand husband's contention. But we conclude that any arithmetic error by the district court is harmless because the

² Husband also discusses a December 21, 2005 letter mentioning the \$50,000 value. Although discussed at the August 2008 hearing, this letter is not in the record, and the district court did not rely on this letter to assess husband's credibility. Accordingly, we do not address husband's arguments with respect to this letter.

figure used in husband's 2006 affidavit and the figures that he testified to in 2008 are nevertheless "wildly" dissimilar.³ The district court appropriately used these varying valuations to assess husband's credibility.

Husband's larger dispute is with the district court's reliance on the 2006 affidavit. Husband argues that the affidavit was in fact a "settlement offer" and therefore could not be admitted pursuant to Minn. R. Evid. 408. Rule 408 states that evidence is inadmissible if (1) it constitutes an offer to compromise a disputed claim, (2) it is offered to prove the invalidity of the claim or the amount of the claim, and (3) it is not being offered for a different, legitimate purpose. *C.J. Duffey Paper Co. v. Reger*, 588 N.W.2d 519, 524 (Minn. App. 1999), *review denied* (Minn. Apr. 28, 1999). "Rule 408 is a rule of exclusion, not a rule of discretion; thus, if a statement violates the rule, a [district] court does not have discretion to admit the statement." *Id.*

We disagree with husband's characterization of his affidavit as an offer of settlement. The purpose of the affidavit was to show why the settlement that had already been reached should be vacated. Because it was not a settlement offer, the affidavit is not inadmissible under rule 408. *See id.* at 524-25 (holding that rule 408 did not exclude evidence of an offer to pay a certain amount when the offer was not one for settlement).

³ In 2006, husband valued "all the vehicles and equipment stored in the sheds, the depot and outside on the property and up at Brent's farm," together with the property awarded to him in the settlement agreement at \$50,000, and he valued the property awarded to him in the settlement agreement at \$26,800. In 2008, he testified that all of the personal property allegedly not auctioned was worth \$120,000. By our calculations, a more accurate comparison would have been a 2006 valuation of \$23,200 (everything available for auction) and a 2008 valuation of approximately \$160,000 (everything that should have been auctioned plus the actual auction proceeds). This results in an even larger discrepancy than the one believed to have existed by the district court.

Further, the affidavit was not offered by wife to prove the invalidity of husband's valuation at the 2008 evidentiary hearing. It was offered, by husband, to show why the property division in the settlement agreement was not equitable. The fact that wife's attorney later referred to this admitted evidence was not improper. Because the affidavit was not an offer of settlement by husband and because it was not offered by wife for an improper purpose, the district court did not err by using husband's 2006 valuation of personal property to assess his credibility.

III.

Husband claims that the district court erred by awarding wife conduct-based attorney fees. A district court may award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1 (2008). "An award of attorney fees rests almost entirely within the discretion of the [district] court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999).

The district court found that husband's conduct was unreasonable and that he contributed to the expense and length of the proceeding by

making meritless claims that he was confused when he entered into the property settlement, declining to abide by the stipulated division of property, failing to cooperate in the submission of the Findings of Fact and Conclusions of Law that were necessary to conclude the matter, claiming current values of the property auctioned that far exceeded his own estimated fair market values in arriving at the property settlement, claiming ownership of trailers which he knew or should have known belonged to his son, remaining silent at

the time any problems at the auction could have been resolved, and in presenting evidence as to the condition and value of the personal property which was misleading at best.

Husband argues that an award of attorney fees in favor of wife was inappropriate, in part because he did not delay in the submission of findings of fact as found by the district court. But the district court's findings supporting its conclusion that wife is entitled to attorney fees are not limited to this alleged delay. The district court also found that husband made meritless claims, presented misleading evidence, claimed inflated property values, and remained silent at the auction when that would have been the best opportunity to resolve any property disputes. These other reasons are sufficient to support an award of attorney fees, even if husband's attorney was not the one that caused part of the delay.

Husband also argues that the district court abused its discretion by awarding attorney fees to wife at the final stage of the proceedings. But because wife initially moved for attorney fees in 2006, and the district court reserved the issue when it granted her motion, husband was on notice throughout the remaining proceedings that he might be assessed conduct-based attorney fees. *See* Minn. Stat. § 518.14, subd. 1 (stating that attorney fees under this section may be awarded "at any point in the proceeding"). Because the district court's conclusion is supported by the record, it was not an abuse of discretion to award conduct-based attorney fees to wife.

Affirmed.