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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1603**

In re the Marriage of:
Amy Janet Gergen, petitioner,
Respondent,

vs.

Alan Richard Gergen,
Appellant.

**Filed July 30, 2012
Affirmed in part, reversed in part, and remanded
Willis, Judge***

Goodhue County District Court
File No. 25-FA-10-302

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(for respondent)

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Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Willis,
Judge.

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

UNPUBLISHED OPINION

WILLIS, Judge

Appellant-father challenges the district court's spousal-maintenance, child-support, property-division, and child-custody awards. We affirm in part, reverse in part, and remand.

FACTS

Appellant-father Alan Richard Gergen and respondent-mother Amy Janet Gergen were married in 2001. They have two children, born in 2007 and 2009. In 2010, mother petitioned for dissolution, and the district court held a two-day hearing. On May 24, 2011, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree. Father moved for amended findings or a new trial. The district court denied father's motion, and this appeal follows.

DECISION

I. Spousal Maintenance

The district court ordered father to pay \$1,000 monthly in spousal maintenance through August 2015. The spousal-maintenance payments were ordered to begin upon the sale of the marital homestead because the district court also ordered father to continue making the \$1,907 monthly mortgage payment until the house is sold.¹ An appellate court reviews a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *Stich v. Stich*, 435 N.W.2d 52, 53

¹ The district court did not designate the mortgage payment as spousal maintenance or a property award but rather as an "interim order."

(Minn. 1989); *Erlandson v. Erlandson*, 318 N.W.2d 36, 38 (Minn. 1982). A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin*, 569 N.W.2d at 202 & n.3 (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)). “Findings of fact concerning spousal maintenance must be upheld unless they are clearly erroneous.” *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992); *see* Minn. R. Civ. P. 52.01 (stating that findings of fact “shall not be set aside unless clearly erroneous”). “A district court’s determination of income for maintenance purposes is a finding of fact and is not set aside unless clearly erroneous.” *Peterka v. Peterka*, 675 N.W.2d 353, 357 (Minn. App. 2004).

An award of spousal maintenance “shall be in amounts and for periods of time, either temporary or permanent, as the court deems just, without regard to marital misconduct, and after considering all relevant factors.” Minn. Stat. § 518.552, subd. 2 (2010). The district court considers several relevant factors regarding the party seeking spousal maintenance: the financial resources of the party; the likelihood that the party will become fully or partially self-supporting given the party’s age, skills, and education; the standard of living established during the marriage; the duration of the marriage; the earnings, seniority, retirement benefits, and other employment opportunities forgone by the party; and the age, physical condition, and emotional condition of the party. *Id.* Also relevant are the ability of the prospective obligor to meet his or her needs while also meeting the needs of the party seeking spousal maintenance and the contribution of each party to the marital property and to the advancement of the other’s employment or business. *Id.* None of these factors is determinative. *Kampf v. Kampf*, 732 N.W.2d 630,

634 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Rather, the district court weighs the particular facts and circumstances presented to determine whether spousal maintenance is appropriate and, if so, the proper amount and duration of the maintenance. *Id.* at 633-34.

The district court here considered the relevant statutory factors in awarding mother spousal maintenance. But father argues that the district court “erred as a matter of law in ordering maintenance in this case.” Father asserts that the maintenance award was unwarranted because a party’s “desire to be home part time with the children” does not justify a maintenance award and because the district court failed to consider mother’s income from her self-employment. Mother worked full time for the University of Minnesota during most of the parties’ marriage. After the birth of their second child, however, mother and father agreed that it was in the best interests of the minor children for her to begin working 30 hours per week, so that she could spend more time at home with the children. The university agreed to this arrangement because it was able to hire an individual to work 10 hours per week and job-share with mother. Mother testified that full-time work with the university is now unavailable because of the hiring of this individual. The district court therefore found that, contrary to father’s assertion, mother was not voluntarily underemployed because her reduced hours were the result of an agreement between the parties during the marriage.

Father argues that the parties did not agree that mother would cut back her hours so that she could spend more time at home with the children but rather so that she could concentrate on her photography business. First, appellate courts defer to district court

credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder”). To the extent that the parties disagreed regarding the basis for the decision to cut back on mother’s employment hours, the district court found mother more credible. Moreover, it does not appear that mother was earning income from the photography business. Rather, it appears that the business was operating at a loss.

Father next argues that the district court “erred in granting such substantial maintenance to [mother]” because the district court “erred in its application of [the] statutory factors, leading to the award of substantial maintenance for years to a party who is young, healthy, college educated, has a long history of working full time and acquiring employment benefits as a result, and is fully capable of self-support.” First, father argues that the \$1,907 mortgage payment should be characterized as “indefinite” spousal maintenance. This argument has merit. Mother testified that she had \$6,454.27 in monthly expenses, which included \$1,907 in mortgage payments. The district court found that mother’s reasonable monthly expenses were \$4,300, after subtracting “the full amount of daycare for the minor children (\$676 per month)² and other ‘anticipated’ expenses for the minor children but which are not now being incurred.” Therefore, mother’s reasonable monthly expenses appear to include the monthly mortgage payment,

² The district court ordered that mother and father split daycare costs. The district court’s reasoning for subtracting the entire daycare expense from mother’s reasonable monthly expenses is therefore unclear.

which father is paying. And it is undisputed that, based on her income, mother cannot afford to make the mortgage payments. Therefore, the mortgage payment, made to a third party, will help mother maintain the standard of living that the parties established during the marriage, thereby supporting father's argument that his payment of the parties' mortgage is not a property award but rather spousal maintenance. *See* Minn. Stat. § 518.552, subd. 1 (2010) (stating that "the court may grant a maintenance order for either spouse if it finds that the spouse seeking maintenance 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"). And the fact that the district court delayed the \$1,000 spousal-maintenance payments until the house is sold lends further support to father's argument that the monthly mortgage payment is actually spousal maintenance. In sum, because mother included mortgage payments in her calculation of expenses for spousal-maintenance purposes even though she is not paying the mortgage, we conclude that the mortgage payments made by father constitute spousal maintenance.

Nonetheless, a \$1,907 monthly spousal-maintenance award is not unreasonable here. The district court found that father has net monthly earnings of \$5,525, not including bonuses. Father's monthly living expenses at the time of the hearing were \$1,760; the court found that his reasonable monthly expenses would be \$3,300 if father were to move out of his parents' home. Father argues that after paying \$1,907 in maintenance and \$1,588 in child support, he is left with a "shortfall of well over \$1200/month." But in calculating gross income for purposes of child support, the court is

required to consider the maintenance being paid by one parent to the other. *See* Minn. Stat. § 518A.29(a) (2010). Therefore, our conclusion that the \$1,907 mortgage payments are spousal maintenance will require the district court to recalculate father’s child-support obligation. Furthermore, the shortfall calculated by father assumes that he has moved out of his parents’ home, and at the time of the hearing, father was living with his parents. Based on his earnings and expenses at that time, there was not a shortfall. Lastly, father’s argument ignores the fact that in calculating father’s income the district court did not consider father’s significant bonuses³ or the tax deduction that is available to father because of his spousal-maintenance payments. If father’s circumstances change, he has the option of seeking a modification of spousal maintenance.

II. Child Support

The district court awarded mother \$1,588 in monthly child support based on the child-support guidelines. The district court has broad discretion to provide for the support of the parties’ children. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). A district court abuses its discretion when it sets support in a manner that is against logic and the facts on record or when it misapplies the law. *See id.* (addressing the setting of support in manner that is against logic and facts on record); *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998) (addressing an improper application of law).

Father argues that the district court failed to properly calculate mother’s income because it “simply ignored [mother’s] self-employment and failed to consider [mother’s] potential income on a full-time basis.” But as noted above, the record does not support

³ Father’s 2009 bonus was \$25,500, and his 2010 bonus was \$12,750.

father's assertion that mother is underemployed. And mother's photography business is currently operating at a loss, so there was no income from the business to be considered by the district court.

The district court acknowledged that father and his significant other were expecting a child together in April 2011. Father therefore argues that the district court failed to make the appropriate adjustments to his income to reflect the fact that he would have another child. Specifically, father argues that the district court failed to account for father's non-joint child and failed to make the appropriate adjustments to his income available for child support based upon the maintenance the district court ordered father to pay to mother. First, the relevant statute provides that

[w]hen either or both parents are legally responsible for a nonjoint child, a deduction for this obligation shall be calculated under this section if: (1) the nonjoint child primarily resides in the parent's household; and (2) the parent is not obligated to pay basic child support for the nonjoint child to the other parent or a legal custodian of the child under an existing child support order.

Minn. Stat. § 518A.33 (2010). The non-joint child had not been born at the time of the hearing in this matter. Therefore, it was impossible to determine if father was eligible for the deduction, that is, whether the child would live in father's household and whether father would be obligated to pay child support for that non-joint child under a support order.

Father next argues that the district court should have considered the \$1,907 mortgage payment as spousal maintenance when calculating child support. As discussed above, we agree. Therefore, the district court should have considered the \$1,907 monthly

mortgage payment as spousal maintenance in calculating child support or explained the basis for not doing so. We remand to give the district court the opportunity to do so.

III. Property Division

A [district] court has broad discretion in evaluating and dividing property in a marital dissolution and will not be overturned except for abuse of discretion. [An appellate court] will affirm the [district] court's division of property if it had an acceptable basis in fact and principle even though we might have taken a different approach.

Antone v. Antone, 645 N.W.2d 96, 100 (Minn. 2002) (citation omitted). A district court's valuation of an item of property is a finding of fact, and the valuation will not be set aside unless it is clearly erroneous on the record as a whole. *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001); *Hertz v. Hertz*, 304 Minn. 144, 145, 229 N.W.2d 42, 44 (1975). An appellate court does not require the district court to be exact in its valuation of assets. "[I]t is only necessary that the value arrived at lies within a reasonable range of figures." *Johnson v. Johnson*, 277 N.W.2d 208, 211 (Minn. 1979).

Father argues that the district court erred as a matter of law "in its valuation of [mother's] pension, a defined benefit plan, and in the equalizer payment ordered accordingly." Without explanation, the district court found that mother's state-retirement-system pension account had a value of \$13,150.64 on December 31, 2010. Father submitted evidence that the pension should be valued at \$23,220. The district court stated:

[Mother] shall receive as her sole and separate property, her Roth IRA, her IRA Rollover, and her Minnesota State Retirement System pension, free and clear of any claims on the part of [father]. [Mother] shall receive the sum of

\$31,117 from [father's] Spectro Alloy's 401(k), adjusted for any gains or losses from December 31, 2010⁴

Pension division is generally discretionary with the district court. *Faus v. Faus*, 319 N.W.2d 408, 413 (Minn. 1982). When dividing retirement benefits, the district court generally uses one of two methods: the present-cash-value method or the reserved-jurisdiction method. *DuBois v. DuBois*, 335 N.W.2d 503, 505 (Minn. 1983). The present-cash-value method “treats the pension as an indivisible asset and awards it, including the right to all future pension benefits, to the employee spouse. In doing so, the value of the pension for property-division purposes is set at its ‘present value’ as of the date on which it is valued.” *Johnson v. Johnson*, 627 N.W.2d 359, 362 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). But “present value” is a term of art with a specific meaning. *Id.* “A present value discounts an award to be received in the future to that amount which, if presently received, could be invested in order to yield the future sum; it is the amount which a person would take now in return for giving up the right to receive an unknown number of monthly checks in the future.” *Id.* (quotations omitted). Thus, if the “present cash value” method of dividing a pension is used, the pension is awarded to the employee spouse at its “present value” and the non-employee spouse is awarded non-pension property in an amount which, in light of the entire property distribution, is required to achieve the equitable property distribution mandated by Minn. Stat. § 518.58, subd. 1 (2010). *Id.* Under the second method of dividing a pension, the “reserved jurisdiction” method, the district court divides the marital estate but reserves

⁴ Father does not challenge the valuation of mother's Roth IRA or IRA Rollover.

jurisdiction over the division of the pension until retirement and divides the actual monetary benefit at that time. *Id.*

Here, the district court valued mother's pension at \$13,150.64, which was the then-current account balance, without further explanation, despite father's presentation of evidence indicating that the pension had a significantly higher value. The district court therefore abused its discretion by failing to calculate the value of the pension using one of the generally accepted methods or to explain its reasoning for valuing the pension as it did. Because the value of the pension directly affects the equalization payment from father's 401(k), this issue is remanded for the district court's further consideration. We note that Minn. Stat. § 518.582, subd. 1 (2010) allows for the appointment of an expert to assist the court in valuing the pension.

Father next argues that the district court abused its discretion by finding that he owed mother \$8,925 from his 2009 bonus. The district court found that father received a \$25,500 bonus in 2009, which was a net amount of \$17,850, assuming a 30% tax rate. The district court ordered father to pay mother half of the net bonus, or \$8,925. Father argues that the district court "failed to account for the fact that a large portion of the bonus check went into [father's] 401(k) with his employer; funds to which [mother] is already granted an interest in the [district] court's order." Therefore, father argues, mother was able to "double-dip." But father did not raise in the district court this argument or present evidence showing that part of the bonus had been deposited into his 401(k). "It is well settled that this court will not consider evidence not presented or admitted by the trial court." *Ronay v. Ronay*, 369 N.W.2d 6, 10 (Minn. App. 1985).

Moreover, “material assertions of fact in a brief properly are to be supported by a cite to the record, and such cites are particularly important where . . . the record is extensive.” *Hecker v. Hecker*, 543 N.W.2d 678, 681–82 n.2 (Minn. App. 1996) (citing Minn. R. Civ. App. P. 128.02, subd. 2; 128.03), *aff’d*, 568 N.W.2d 705 (Minn. 1997). Father cites no record evidence that supports his argument. Therefore, father has waived the argument.

Father next argues that the district court erred by “failing to account for the reduction in the mortgage principal balance, or the interest deduction, created by ordering [father] to pay the mortgage.” Father insists that the district court “failed to address how the reduction in the mortgage principal would be allocated [effectively therefore granting [mother] the right to 1/2 the mortgage principal reduction paid by [father] after the dissolution of marriage.” But father cites no legal authority directing the district court to make these determinations. Rather, the law vests the district court with broad discretion to equitably divide the marital estate. Minn. Stat. § 518.58, subd. 1. An assignment of error in a brief based on “mere assertion” and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). The district court did not abuse its discretion by ordering father to pay the mortgage without accounting for the reduction in the mortgage principal balance or interest deduction.

IV. Custody

Father argues that the district court abused its discretion by rejecting the custody evaluator’s recommendation that the parties share joint physical custody of the children. The district court awarded sole physical custody of the parties’ children to mother but

gave the parties joint legal custody. The district court also established a parenting-time and holiday schedule. A district court has broad discretion to provide for the custody of the parties' children. *Rutten*, 347 N.W.2d at 50; *In re M.R.P.-C.*, 794 N.W.2d 373, 378 (Minn. App. 2011). "Appellate review of custody determinations is limited to whether the [district] court abused its discretion by making findings unsupported by the evidence or by improperly applying the law." *Pikula v. Pikula*, 374 N.W.2d 705, 710 (Minn. 1985). A district court's findings of fact will be sustained unless they are clearly erroneous. *Id.*; see Minn. R. Civ. P. 52.01 (stating that findings of fact are not set aside unless clearly erroneous). The law "leaves scant if any room for an appellate court to question the [district] court's balancing of best-interests considerations." *Vangsness v. Vangsness*, 607 N.W.2d 468, 477 (Minn. App. 2000).

The guiding principle in all custody determinations is the best interests of the children. Minn. Stat. § 518.17, subd. 3(a)(3) (2010); *Durkin v. Hinich*, 442 N.W.2d 148, 152 (Minn. 1989). In making a best-interests determination, the district court must consider all relevant facts, including 13 statutorily enumerated factors. Minn. Stat. § 518.17, subd. 1(a) (2010) (listing factors that must be considered). The district court must consider additional factors when joint legal or physical custody is sought. *Id.*, subd. 2 (2010). In this case, the district court made thorough findings regarding all of the statutory factors and concluded that it is in the children's best interests for mother to have sole physical custody and for the parties to share joint legal custody.

The district court stated that it "considered the very limited usefulness of the custody evaluation" when making its custody determination. And a district court is not

bound by an independent evaluator's custody recommendations. *Pikula*, 374 N.W.2d at 712; *Rutanen v. Olson*, 475 N.W.2d 100, 104 (Minn. App. 1991); *Mowers v. Mowers*, 406 N.W.2d 60, 64 (Minn. App. 1987). Whether to accept a recommendation is a discretionary decision of the district court. *Rutanen*, 475 N.W.2d at 104. The decision not to follow the independent evaluator's recommendation is not an abuse of discretion, provided that the district court (1) makes detailed findings regarding the best-interests factors in Minn. Stat. § 518.17, subd. 1, and those findings support the conclusion that the district court's custody determination is in the child's best interests; or (2) explains its reasons for the rejecting the recommendation. *See Rogge v. Rogge*, 509 N.W.2d 163, 166 (Minn. App. 1993) (requiring district court to explain its rejection or provide findings that examine same factors as evaluator's study), *review denied* (Minn. Jan. 28, 1994). As discussed above, the district court made detailed findings regarding the best-interests factors, which are supported by the record evidence and, together, support the conclusion that an award of sole physical custody to mother is in the children's best interests. Therefore, the district court did not abuse its discretion when it declined to follow the custody evaluator's recommendation.

Father notes that the joint-custody factors support a joint-physical-custody award and contends that the district court therefore should have awarded joint physical custody. *See* Minn. Stat. § 518.17, subd. 2 (setting forth the additional best-interests factors to be considered when joint custody is sought). Even assuming that father is correct that the joint-custody factors support a joint-physical-custody award, the district court is required to consider *all* of the statutory best-interests factors in making a decision. Based on the

totality of the evidence, it was not an abuse of discretion to find that joint physical custody was not in the best interests of the children.

Father also argues that the district court's finding that mother was the primary caretaker of the children is not supported by the record. We disagree. The crux of father's argument is that the district court relied too heavily on the fact that mother reduced her work schedule in order to spend more time at home with the children. But the district court made other detailed findings supporting its determination that mother is the primary caretaker. The district court noted that mother testified that her caretaking activities included "doing the following for the children the majority of the time: bathing, haircuts, dressing, purchasing clothing, laundry, preparing homemade baby food, putting them to bed, all doctor visits including sick and well visits, and staying home when they are ill." The district court also stated that "[b]oth parents are fully capable of and have participated together in the caretaking of the children." Thus, the district court did not find that mother was the *only* caretaker of the children, but rather that she was the *primary* caretaker. This finding is not clearly erroneous.

Father next argues that the district court "made conclusory, summary findings which are not supported by the evidence in the record, as to the concerns raised by the religious changes made by [mother] during the pendency of these proceedings." Father contends that the district court "failed to appreciate . . . that the issue of religion had been a very difficult one for the parties; something which the record clearly establishes." But the record demonstrates that the district court understood the tension between the parties regarding the religious upbringing of the children. The district court found:

The parties do disagree how best to continue educating and raising the children in the children's religion or creed. During the marriage, the parties chose to attend the ELCA Lutheran Church together as a family. After the separation, Mother now attends the Wisconsin Evangelical Lutheran Synod (WELS) where she has been a lifetime member. She intends to continue membership at that church and would like the children to likewise attend when they are with her on parenting time. Following the separation, Father has continued to attend the ELCA Lutheran Church. He intends to become a member of the ELCA Lutheran Church and for the children to attend that church during his parenting time.

....

There is some concern that Mother has attempted to keep the father uninformed as to certain aspects of the boys' religious upbringing during the pendency of these proceedings. The Court expects that now that the dissolution is finalized, the parties will keep each other fully apprised of all the children's activities, especially involvement in religious activities, so they can work together and be mutually supportive. The Court expects that the parties will inform each other of religious ceremonies and performances in advance so that the other party may attend, in the same way they keep each other informed of school activities and performances.

The district court further found that “[n]either party nor the custody evaluator was able to articulate any harm that would befall these children by attending either the WELS Lutheran Church or the ELCA Lutheran Church during the respective parenting times.” We note that, under Minn. Stat. § 518.003, subd. 3(a), (b) (2010) and *Novak v. Novak*, 446 N.W.2d 422, 424–25 (Minn. App. 1989), the question of a child's religious training is an issue of legal custody. The parties here have joint legal custody.

Father alleges that, before the marriage, he belonged to the Catholic church and mother belonged to the Wisconsin Evangelical Lutheran Synod (WELS). He further

alleges that during the marriage the parties agreed as a compromise to attend as a family the Evangelical Lutheran Church in America (ELCA). And although the district court acknowledged that “[d]uring the marriage, the parties chose to attend the ELCA Lutheran Church together as a family,” it failed to consider this agreement when ordering that the children could attend a WELS church when mother has parenting time. Father argues that the district court therefore erred “in failing to order that the children be raised within the ELCA church as agreed upon by the parties during their marriage and until [mother] unilaterally changed their religious attendance during the dissolution proceedings.” He insists that the district court was required to “make the necessary particularized and specific best interests findings” and “actually decide the issue of the minor children’s religious attendance.” Father’s argument has merit. Because the record supports father’s assertion that the parties had agreed to raise their children in the ELCA, this issue is remanded for the district court either to honor the parties’ agreement or explain why it is in the children’s best interests that they attend both ELCA and WELS churches.

Father argues that the parenting-time schedule is not in the best interests of the children. A district court shall “grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.” Minn. Stat. § 518.175, subd. 1 (2010). The district court ordered that the children have parenting time with father on alternate weekends, Fridays from 5 p.m. until Sundays at 5 p.m., and every Tuesday from 5 p.m. until Wednesday at 7:30 a.m. The district court thoroughly considered the best-interests factors before ordering custody and establishing the parenting-time schedule. And the

district court concluded that the parenting-time schedule already in place should be extended, noting that “the children are doing well with this schedule” and that it “is not in the children’s best interest to transition them frequently between homes or to deprive them of a ‘home base’ with their primary caretaker.” The parenting-time schedule ordered by the district court was well within its discretion. Father again argues that the district court erred by rejecting the custody evaluator’s recommendation, this time for increased parenting time for father. But as noted above, the district court conducted the appropriate best-interests inquiry and therefore had the discretion to reject the custody evaluator’s recommendation. *See Rutanen*, 475 N.W.2d at 104.

Father argues that the district court erred “[i]n failing to provide any specific holiday or vacation schedule for these parties.” “Upon request of either party, to the extent practicable an order for parenting time must include a specific schedule for parenting time, including the frequency and duration of visitation and visitation during holidays and vacations, unless parenting time is restricted, denied, or reserved.” Minn. Stat. § 518.175, subd. 1(c). The district court ordered that “Holidays, including New Year’s, Easter, Memorial Day, July 4th, Labor Day, Thanksgiving, Christmas Eve and Christmas Day, shall be alternated between the parties and shall take precedence over regular parenting time. The parties shall work together to encourage vacation time with the other parent.” This schedule for holidays and vacations is sufficiently specific to satisfy the statute. And father provides no legal authority mandating more specificity. *See Modern Recycling, Inc.*, 558 N.W.2d at 772 (stating that an assignment of error in brief based on “mere assertion” and not supported by argument or authority is waived

unless prejudicial error is obvious on mere inspection). Because prejudicial error is not obvious, the alleged lack of specificity in the holiday and vacation schedule does not provide a basis for remand.

In sum, we affirm the district court's judgment with the following exceptions: (1) we reverse and remand for the district court to consider the \$1,907 monthly mortgage payments as spousal maintenance in calculating child support or to explain the basis for not doing so; (2) we reverse and remand for the district court to calculate the value of mother's pension using one of the generally accepted methods or explain its reason for not doing so and to make any consequential adjustments to the equalization payment; and (3) we reverse and remand for the district court either to honor the parties' agreement to raise the children in the ELCA or to explain why it is in the children's best interests not to do so.

The district court may, in its sole discretion, reopen the record upon remand.

Affirmed in part, reversed in part, and remanded.