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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1807**

In re the Marriage of: Frank Andrew Kvaternik, petitioner,
Respondent,

vs.

Deanna Scherr Kvaternik n/k/a Deanna Lorraine Scherr,
Appellant.

**Filed August 19, 2013
Affirmed
Larkin, Judge**

Dodge County District Court
File No. 20-FA-10-1055

Amber Lawrence, Dittrich & Lawrence, P.A., Rochester, Minnesota (for respondent)

Deanna L. Scherr, Rochester, Minnesota (pro se appellant)

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

UNPUBLISHED OPINION

LARKIN, Judge

In this marital-dissolution case, appellant-wife challenges the district court's judgment and decree. Because the evidence sustains the district court's findings of fact, the findings support its conclusions of law, and we discern no reversible error, we affirm.

DECISION

Appellant-wife Deanna Lorraine Scherr and respondent-husband Frank Andrew Kvaternik were married in 1994. The parties have two children, born in 1996 and 2000 respectively. Husband filed for dissolution of the parties' marriage in 2010. Following a seven-day trial, the district court issued a 92-page judgment, which incorporates a thorough, detailed memorandum providing "additional context and authority" for its findings and conclusions. Wife challenges the district court's judgment and decree.

Absent a motion for a new trial, appellate review includes substantive legal issues properly raised to and considered by the district court, whether the evidence supports the findings of fact, and whether those findings support the conclusions of law and the judgment. *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 311 (Minn. 2003) (stating that new-trial motion is not prerequisite to appellate review of substantive legal issues properly raised and considered in district court); *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976) (stating that absent motion for new trial, appellate courts may review whether evidence supports findings of fact and whether findings support conclusions of law and judgment). We uphold the district court's factual findings unless they are clearly erroneous, Minn. R. Civ. P. 52.01, and we will only determine a finding to be clearly erroneous if we are left with "the definite and firm conviction that a mistake was made." *Vangness v. Vangness*, 607 N.W.2d 468, 474 (Minn. App. 2000). A district court abuses its discretion by making findings unsupported by the evidence or improperly applying the law. *Lenz v. Lenz*, 430 N.W.2d 168, 169 (Minn. 1988).

Wife raises numerous arguments on appeal. We will consider each argument in turn, with the exception of wife's change-of-venue and child-custody arguments because a special-term panel of this court previously determined that those issues are not properly before this court on appeal. *Kvaternik v. Kvaternik*, No. A12-1807 (Minn. App. Apr. 23, 2013) (order op.). We are not now allowed to reconsider that decision. *See* Minn. R. Civ. App. P. 140.01 (stating that there is no petition for rehearing in this court).

I.

Wife argues that the district court judge was biased against her. There is a "presumption that a [district court] judge has discharged his or her judicial duties properly," and a party alleging bias has the burden to establish allegations sufficient to overcome this presumption. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). "Prior adverse rulings by a judge, without more, do not constitute judicial bias." *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006).

Wife did not move for judicial recusal or otherwise raise the bias issue in district court. An appellate court considers "only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." *Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985) (observing that appellant raised no objections that the district court judge was biased against her and did not move the judge to recuse himself) (quotation omitted). A party's failure to raise a claim of judicial bias during the proceedings in district court raises doubt about the timeliness of the issue on appeal. *Id.* Nonetheless, we have reviewed the record and wife's specific bias allegations and conclude that wife's assertion of judicial bias is without merit.

II.

Wife challenges the credibility of several witnesses. Moreover, the bulk of her arguments challenge district court decisions that are based on credibility determinations and resolution of conflicting evidence. Appellate courts accord “great deference to a [district] court’s findings of fact because it has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it.” *Hasnudeen v. Onan Corp.*, 552 N.W.2d 555, 557 (Minn. 1996). On appeal, this court will “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). To the extent that wife asks this court to reevaluate witness credibility, we decline to do so because appellate courts defer to the fact-finder’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

III.

Wife makes several arguments regarding the district court’s property division. “Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the [district] court’s underlying findings of fact.” *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). “However, if [the reviewing court is] left with the definite and firm conviction that a mistake has been made, [it] may find the [district] court’s decision to be clearly erroneous, notwithstanding the existence of evidence to support such findings.” *Id.* (quotation omitted); see *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008) (stating that “[appellate courts] independently review the issue of

whether property is marital or nonmarital, giving deference to the district court's findings of fact"); *Gottsacker v. Gottsacker*, 664 N.W.2d 848, 852 (Minn. 2003) ("Determining whether property is marital or nonmarital . . . is an issue over which [appellate courts] exercise independent review, though deference is given to the district court's findings of fact.").

Cash

Wife first argues that the district court erred "when it determined that \$105,000 husband borrowed from his company and clients during the pendency of the proceedings was a joint and marital debt." The district court found that "[d]uring the pendency of the proceedings, Husband had to borrow \$105,500 from his clients and company in order to pay the parties' joint marital obligations and the expenses for the parties' two minor children. . . . Wife contributed nothing towards the preservation of the marital estate during the pendency of the proceedings." Wife contends that there was a "lack of evidence substantiating the nature of these loans." However, husband testified regarding these loans, as did his accountant. Husband also provided documentation of these loans from his clients in the form of bank statements showing wire transfers into his personal checking account. The district court's finding that these transfers were loans is based on the testimony of husband and his accountant, which the district court obviously believed. We defer to that credibility determination. *See Sefkow*, 427 N.W.2d at 210.

Wife next argues that the district court erred by crediting her with \$18,000 in the property division. The district court found that wife had removed that amount from the parties' joint safe-deposit boxes and home safe. Wife asserts that "[t]here is no proof"

that she removed this money. Once again, “[a]ppellate [courts] set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility.” *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). The district court explicitly found “[h]usband’s testimony credible as to the (former) existence of \$18,000 cash that is now missing” and noted that wife accessed the parties’ safe-deposit boxes the day after the parties separated and immediately thereafter accessed her own, private safe-deposit box. Although it is circumstantial, the record evidence supports the district court’s finding. *See Pigman v. Nott*, 305 Minn. 512, 512, 233 N.W.2d 287, 288 (1975) (affirming a finding based entirely on circumstantial evidence as not “clearly erroneous”). The district court therefore did not err by crediting this amount to wife.

Wife argues that the district court erred “when it concluded that a non-marital cash gift of \$10,000 was made to husband by” a client in 2000. The district court found that the money had been given to husband, that husband gave the money to wife to deposit in their bank account, and that she deposited the money in her personal account. The district court therefore ordered the money returned to husband. Husband testified that the money was a gift to him, whereas wife testified that it was a gift to her. The district court’s finding stems from its resolution of conflicting testimony, to which this court defers. *Goldman*, 748 N.W.2d at 284.

Jewelry

The district court concluded that the majority of the parties’ 248 pieces of jewelry was marital property. Wife “asks this court to revise the allocation of gifts in the

judgment, awarding her the jewelry and purses as her non-marital gifts with the exception of those few items wife testified were actual gifts from husband.” But error is never presumed on appeal. *White v. Minn. Dep’t of Natural Res.*, 567 N.W.2d 724, 734 (Minn. App. 1997), *review denied* (Minn. Oct. 31, 1997). And wife does not establish that the district court erred in determining that the jewelry in question was marital property, making only vague assertions that the jewelry was given to her by husband’s clients. The district court found that wife lacked credibility regarding her recent claim that the jewelry was nonmarital property, and this court defers to that credibility determination. *Goldman*, 748 N.W.2d at 284.

Vehicles

Wife challenges the district court’s finding that a 2007 Toyota FJ Cruiser was gifted to husband individually. Husband testified that the vehicle was a gift to him from a client, whereas wife insists that the vehicle was purchased as a family vehicle and is therefore marital property. She argues that the district court abused its discretion by “not allowing into evidence the Purchase Agreement for the FJ Cruiser claiming it was a discovery violation.”

“The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). Wife fails to support her assertion of error with any legal authority, and assignments of error in a brief based on mere assertion and not supported by argument or authority are waived unless prejudicial error is obvious on

mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). Moreover, because the evidence presented at trial supports the district court's factual finding, the district court did not err by treating this vehicle as husband's nonmarital property.

Wife next challenges the district court's finding that "[t]he Sea doo Boat, motor, and trailer valued at \$13,000 was a gift to [h]usband individually from [a client]. [This client] has never met [w]ife." Wife insists that she has met this client and testified in accordance at trial. Once again, we defer to the district court's credibility determinations. *Goldman*, 748 N.W.2d at 284. Moreover, even assuming that wife had met this client it does not necessarily compromise the validity of the district court's finding that the boat was a gift to husband individually.

The district court also found that the parties sold a 1997 Crestliner fishing boat to wife's sister for \$5,000, which wife's sister never paid. The court awarded each party the right to collect \$2,500 from wife's sister. Wife argues that there is "no contract and no proof" and that "[t]his should be dismissed." There is testimonial evidence in the record supporting the district court's factual finding. Wife, of course, has the option of not collecting her share of the debt.

Lastly, wife argues that husband "disposed of the marital property of a 2007 Cadillac Escalade after the separation." Husband testified at trial that the Escalade was a company car that belonged to his clients and that he shipped the vehicle to his client shortly after the parties' separation. The district court found this testimony credible, and we defer to this credibility determination. *Id.*

IV.

Wife argues that the district court erred in calculating husband's income for child-support purposes because "it failed to include husband's business expenses as income as required by law."

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 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). "The district court's determination of net income must be based in fact and it will not be overturned unless it is clearly erroneous." *Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009). The district court "in its discretion must decide what expenses, if any, are allowable deductions." *Id.*

The district court acknowledged that husband's monthly income for child-support purposes was "complicated to compute." The district court stated:

Husband is . . . able to write off approximately \$9,000.00 per year (based on recent figures) in meals and entertainment expenses. While this might be considered another form of income, it is not treated as such for tax purposes and it does seem to the Court that it is arguable that Husband's business, relying as it does on the goodwill as between Husband and his five major clients, requires that those clients be satisfied in order that there be continued profitability of the business. Thus, this court is not inclined to make some further upward adjustment to Husband's gross income by virtue of this arguably necessary business expense. It is also the case that the Husband had been a regular beneficiary of gifts from his clients. These gifts have been generous and have included

various vehicles/ATVs, jewelry and watches, and cash, among other things. The Court does not regard gifts as being reliable enough or predictable enough to include their receipt as somehow being appropriate for calculation of monthly income. While the Court does have these gifts in mind in connection with Husband's overall economic picture, the Husband's monthly income for determining child support is \$15,000

The evidence supports the district court's factual findings regarding husband's net income, and there is therefore no error.

Wife also argues that the district court improperly failed to consider "large sums of cash wire transfers in [husband's] personal account" as income. But the district court explained that it was unable to determine the basis for these deposits due to wife's unauthorized removal of business records from husband's office. Wife was ordered to produce the records, but repeatedly failed to do so. After trial began, wife produced the documentation in an effort to support her claims. Husband moved the district court to exclude the documents, and the district court granted the motion. Because the information that would have enabled the district court to thoroughly consider the issue was excluded based on wife's violation of a discovery order, wife's assertion of error is not persuasive. *See* Minn. R. Civ. P. 37.02, subd. (b)(2) (stating that "if a party . . . fails to obey an order to provide or permit discovery" the district court may issue "[a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses"); *see also* *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the

district court with the evidence that would allow the district court to fully address the question.”), *review denied* (Minn. Nov. 25, 2003).

V.

Wife argues that the district court failed to properly consider several statutory factors when ordering spousal maintenance, particularly her financial resources and the standard of living established during the marriage. *See* Minn. Stat. § 518.552 (2012) (listing the relevant factors to be considered by the district court when calculating spousal maintenance). Wife also argues that the district court erroneously calculated husband’s income for spousal-maintenance purposes.

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 (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 (Minn. 1997). “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). And “the district court is not required to make specific findings on every statutory factor if the findings that were made reflect that the district court adequately considered the relevant statutory factors.” *Id.* at 360.

The district court made detailed findings regarding the monthly expenses of both parties. Wife argues that the district court’s spousal-maintenance award leaves her with a

monthly deficit of \$1,083. But this argument fails to consider the fact that wife was also awarded \$734,455.97 of marital assets, which included a cash payment of \$100,000. Moreover, a resulting budgetary shortfall for one or both parties does not automatically render the award of spousal maintenance an abuse of discretion. *See Ganyo v. Engen*, 446 N.W.2d 683, 687 (Minn. App. 1989) (upholding spousal maintenance award that resulted in shortfall for husband).

Wife also argues that the district court failed to consider the standard of living the parties had established during the marriage. The record belies this assertion. The district court stated that “[t]he family enjoyed a higher standard of living within the last two years of the marriage prior to their physical separation.” The district court also noted that the parties’ lifestyle “was being transformed from a middle-class lifestyle to an upper-middle-class lifestyle at the least” and discussed the parties’ expensive home, jewelry, watches, and vehicles. Wife’s assertion that the district court failed to consider the parties’ standard of living is therefore without merit.

Wife again argues that the district court improperly calculated husband’s income by ignoring several large deposits into his bank account. But the district court explained that it was unable to determine the basis for these deposits due to wife’s unauthorized removal of business records from husband’s office. We are not persuaded that the district court abused its discretion in determining spousal maintenance.

VI.

Wife argues that the district court erred by ordering her to pay \$25,000 in conduct-based attorney fees. Conduct-based fee awards “are discretionary with the district court.”

Szarzynski v. Szarzynski, 732 N.W.2d 285, 295 (Minn. App. 2007); *see also* Minn. Stat. § 518.14, subd. 1 (2012) (stating that conduct-based fees “may” be awarded against a party who unreasonably contributes to the length or expense of the proceeding); *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (stating, in the context of reviewing a conduct-based award of attorney fees, that “[a]mong other ways, a district court abuses its discretion if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law”) (quotation and citations omitted)).

The district court found that “[w]ife unnecessarily contributed to the length and expenses of these proceedings from the very beginning of the parties’ separation” by, among several other things, removing husband’s business records from his office and erasing the financial information from his computer. The district court made 12 specific findings supporting the award of conduct-based attorney fees. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007) (“The district court must make findings to explain an award of conduct-based attorney fees . . .”). As support for her contention that the district court erred in awarding husband attorney fees, wife primarily argues that husband’s attorney behaved inappropriately during the litigation. But wife does not explain why the conduct of husband’s attorney excuses her conduct or should lead this court to conclude that the district court erred. Thus, wife does not establish that the district court abused its discretion.

VII.

Wife also challenges portions of the judgment regarding payment of expenses related to the marital home. Wife argues that the district court erred by ordering her to pay a portion of the fee husband incurred to have the marital home cleaned “as a result of the condition the home was left in by [w]ife.” The district court noted that “[w]ife maintains that there was no need to incur this expense as she, her mother, and a friend adequately cleaned the residence before she left.” We defer to the district court’s rejection of wife’s testimony on this issue. *See Gada*, 684 N.W.2d at 514.

Wife next argues that the district court erred by ordering her to pay a portion of the fee husband incurred to have a wine compressor fixed. Wife argues that the compressor was under warranty and that husband had sole possession of the home. Husband testified that the warranty expired in 2011. He further testified that the compressor was in working condition before he vacated the home and did not work upon his return. Again, this finding required the district court to resolve conflicting testimony, and we defer to the district court’s resolution. *See id.*

The remainder of wife’s brief sets forth various assertions, which are unsupported by legal authority or argument. Because wife does not articulate an argument or a request for appellate relief, we do not discuss her assertions. *See Modern Recycling*, 558 N.W.2d at 772 (stating that 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).

Affirmed.