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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2386**

In re the Marriage of:

Leanne Dedrick Kieffer, petitioner,
Respondent,

vs.

Howard Owen Kieffer,
Appellant.

**Filed November 24, 2014
Affirmed
Reilly, Judge**

St. Louis County District Court
File No. 69DU-FA-10-956

Susan Ginsburg, Duluth, Minnesota (for respondent)

Howard Owen Kieffer, White Deer, Pennsylvania (pro se appellant)

Considered and decided by Peterson, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

Appellant challenges a district court order dividing property that was issued following a motion by respondent and a hearing. Appellant disputes the sufficiency of

service of the motion documents, the hearing procedures, and the district court's resolution of conflicting affidavits. We affirm.

FACTS

This appeal arises from proceedings for the dissolution of the parties' marriage. Appellant Howard Owen Kieffer has been incarcerated in federal prison during the dissolution proceedings and has participated via telephone in hearings and the court trial. As part of the dissolution, respondent Leanne Dedrick Kieffer was awarded a 1968 Mercedes Roadster (the vehicle) that the parties owned. The district court ordered respondent to sell the vehicle and to place the sale proceeds in an escrow account for division in the future.

According to an affidavit of service in the record, appellant was served by mail with a notice of motion, motion, and affidavit on September 30, 2013. The notice of motion and motion stated that respondent would request an award of the proceeds from the sale of the vehicle during a hearing on October 14, 2013. The district court held a motion hearing on October 14, and called appellant's counselor at the prison, did not receive a response, and left a voicemail message. The district court went forward with the hearing without appellant's participation. The following day, the district court issued an order directing that respondent be compensated for costs of transportation and repair of the vehicle in preparation for its sale and that the parties equally divide the remaining sale proceeds.

Following receipt of the court order, appellant wrote to the district court and stated that he did not receive any information to indicate that a hearing would be held or a

motion considered. He contended that the district court should have arranged for a telephone conference to ensure his participation at the hearing, and he objected to the hearing having been held on Columbus Day, a federal holiday. Appellant also disputed the existence of evidence relating to the sale of the vehicle and challenged the district court's division of the sale proceeds. He requested that the district court hold a second hearing on respondent's motion. The district court issued a second order in response to appellant's letter and declined to hold another motion hearing. The district court stated that respondent complied with Minnesota's service requirements by mailing the motion documents to appellant and that the court was not obligated to arrange for his telephone participation at the hearing when he did not submit a written request for a telephone conference. The district court also found that allegations concerning the vehicle that appellant made in his letter "are without support." This appeal follows.

D E C I S I O N

I.

Appellant first challenges the sufficiency of service of the motion documents. Issues involving the application of court rules and the determination of sufficiency of service are reviewed de novo. *Van Slooten v. Estate of Schneider-Janzen*, 623 N.W.2d 269, 270 (Minn. App. 2001).

A written notice and motion may be served upon a party or attorney by personal delivery, by transmitting a copy by facsimile, by mailing a copy to the party's or attorney's last known address, or by leaving a copy with the court administrator if no address is known. Minn. R. Civ. P. 5.01, .02(a); *see also* Minn. R. Gen. Pract. 302.01(b)

(“After a Family Law Action has been commenced, service may be accomplished in accordance with Minn. R. Civ. P. 5.”). “Service by mail is complete upon mailing.” Minn. R. Civ. P. 5.02(c). Therefore, if a paper is properly mailed, “the risk of nondelivery is on the addressee.” *Kelley v. Moe*, 387 N.W.2d 664, 668 (Minn. App. 1986). Further,

No motion shall be heard [in a family law action] unless the moving party pays any required motion filing fee, properly serves a copy of the [notice of motion and motion, affidavits and exhibits, and any memorandum of law] on all parties and files them with the court administrator at least 14 days prior to the hearing

Minn. R. Gen. Pract. 303.03(a)(1).

The record reflects that the motion documents were properly served on appellant by mailing a copy of them to his last-known address on September 30, 2013, which was 14 days prior to the motion hearing. This service complied with the Minnesota rules and was sufficient.

II.

Appellant argues that the district court should not have held the motion hearing on a federal holiday. He contends that, being a federal prison inmate, he could not have participated in the hearing by telephone on that day even if he had received advance notice of the hearing because many correctional employees were off of work. Issues involving scheduling and continuances are reviewed for an abuse of discretion. *See Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010); *Mercer v. Andersen*, 715 N.W.2d 114, 123 (Minn. App. 2006).

The Minnesota judicial branch has opted to treat the Friday after Thanksgiving, rather than Columbus Day, as a holiday. *See* Minn. Stat. § 645.44, subd. 5 (2012) (granting this option to the branches of state government). “Where it is determined that Columbus Day or the Friday after Thanksgiving is not a holiday, public business may be conducted thereon.” *Id.* The district court did not receive a request for a continuance of the hearing to a different day and did not abuse its discretion by going forward with the motion hearing on October 14.

III.

Appellant states that the district court arranged for his telephone participation for previous hearings, and he argues that the court was obligated to make the same arrangements for the October 14 hearing. “Upon the request of a party or upon its own initiative, the court may hear any motion by telephone conference.” Minn. R. Civ. P. 7.02(a); *see also* David F. Herr & Roger S. Haydock, 1 *Minnesota Practice, Civil Rules Annotated R. 7.02* (5th ed. 2014) (stating that rule 7.02(a) “vests all discretion regarding use of the telephone to hear a motion with the court”). The district court was not asked in advance to permit or arrange for appellant’s participation by telephone, nor was it required to make such arrangements. The district court did not abuse its discretion by failing to ensure appellant’s participation by telephone at the motion hearing.

IV.

Finally, appellant argues that the district court should not have disregarded allegations that he made in his letter, which he apparently intended to be a sworn affidavit. An appellate court defers to a district court’s resolution of factual issues

presented by conflicting affidavits. *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that an appellate court must defer to a district court’s credibility determinations).

In his letter, appellant contested the need for transportation or repair of the vehicle in preparation for its sale, disputed the adequacy of the sale price, and demanded evidence regarding the costs and proceeds of the sale. In the affidavit included with her notice of motion and motion, respondent averred that it was necessary to have the vehicle transported and repaired prior to sale because “[t]he vehicle was not in working order when [she] received it and was not in saleable condition until certain work was completed.” She asserted that “[t]he sale price was determined according to mechanical and body work still needed and the status of the market for the vehicle” and that “[t]he vehicle was not in ‘show car’ condition, nor does it run reliably.” Copies of the cashier’s check from the sale, the bill of sale, and receipts relating to the vehicle’s transportation and repairs were attached to respondent’s affidavit. Resolution of the factual disputes involving the transportation, repair, and sale of the vehicle must be left to the district court. And the district court’s findings and order are supported by the record.

Affirmed.