STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2293

Christopher Glen Westfall, petitioner,
Appellant,

vs.

Nina Maria Westfall,
Respondent.

Filed April 15, 2008
Affirmed in part and reversed and remanded in part; motion denied
Peterson, Judge

Ramsey County District Court
File No. F8-04-1860

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Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this appeal from a marital-dissolution judgment, appellant-husband argues that (1) the district court erred in declining to grant him a continuance under the Servicemembers Civil Relief Act; (2) the findings of fact are not supported by the record;

(3) the conclusions of law are contrary to law and are not supported by the findings of fact; and (4) the district court erred in denying his motion to vacate the judgment without holding an evidentiary hearing. Respondent-wife seeks an award of appellate attorney fees. We affirm in part, reverse and remand in part, and deny respondent's motion.

FACTS

Appellant-husband Christopher Glen Westfall and respondent-wife Nina Maria Westfall were married on July 14, 1995, and have four minor children. The parties separated in July 2004, after wife obtained an emergency ex parte order for protection (OFP).[1] In August 2004, following a contested hearing, the OFP court issued an OFP to wife against husband that granted wife sole legal and physical custody of the children, granted husband parenting time, and reserved child-support and spousal-maintenance issues. The dissolution action was initiated in October 2004.[2] Later that month, the OFP court issued a temporary order that ordered husband to pay $1,646 per month in child support, in accordance with the parties' agreement. The OFP court found that husband earned a net monthly salary of $4,222 from working as a recruiter for the United States Air Force and had the ability to earn $2,000 more per month based on a part-time security job that husband held at the time the OFP was filed. The OFP court found that husband

[1] Because this appeal involved two proceedings, the opinion refers to the court that issued the OFP as the OFP court. The court that tried the dissolution action is referred to as the district court.

[2] 2005 Minn. Laws ch. 164 and 2006 Minn. Laws ch. 280 changed statutory provisions related to child support, medical support, and maintenance. The provisions of those acts that are used to calculate parties' support obligations apply to actions filed after January 1, 2007. 2006 Minn. Laws ch. 280, § 44. Because this action was filed before January 1, 2007, the provisions do not apply.

was capable of earning $6,222 per month and ordered him to pay $1,200 per month in spousal maintenance. In March 2005, the district court issued a temporary order in the dissolution file that required husband to pay the same amounts for child support and maintenance as the order in the OFP file.

In May 2005, the district court held a hearing on husband's motion to modify temporary custody and child support. The district court stated that, while husband claimed that the Air Force would not let him obtain a second job, husband "failed to provide any evidence in support of this position." The district court found that husband was capable of earning $6,280 per month and ordered child support of $1,646 per month, which the court indicated was a downward departure.

In August 2005, after a hearing, the district court ordered husband to produce discovery and notified him that failure to do so would result in adverse findings.

On November 2, 2005, the first day of the dissolution trial, the parties agreed that wife would have sole physical and sole legal custody of the children. The second day of trial was scheduled for December 1, 2005. On November 30, 2005, husband requested a continuance based on the Servicemembers Civil Relief Act (SCRA).[3] On December 1, 2005, husband did not appear in court. The district court denied husband's request for a continuance and proceeded with the trial. Husband's attorney told the district court that husband was no longer in agreement with the custody settlement.

[3] Husband requested a continuance under the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. app. § 521 (2000), but the district court recognized that the statute was amended and given a new title in 2003. *See* 50 U.S.C. app. §§ 501, 522 (Supp. 2003) (title and provision governing stay of proceeding).

On December 30, 2005, the district court issued its judgment. Husband appealed, and this court dismissed the appeal without prejudice because husband had filed a motion to vacate the judgment. *Westfall v. Westfall*, A06-404 (Minn. App. Apr. 4, 2006) (order). This court allowed husband to bring the appeal after the district court ruled on the motion to vacate. *Id.*

In June 2006, the district court heard husband's motion to vacate for fraud both the 2004 OFP and the dissolution judgment. Husband claimed that wife conspired with her attorney to obtain an OFP against him before filing for dissolution. With respect to the dissolution, husband wanted to vacate only the custody and parenting-time awards. The district court denied husband's motion to vacate the judgment and the OFP. Husband appeals from both the dissolution judgment and the denial of his motion to vacate.

D E C I S I O N

I.

Whether an individual is entitled to the protections of the SCRA is a question of statutory interpretation. *Reed v. Albaaj*, 723 N.W.2d 50, 53-54 (Minn. App. 2006). An appellate court reviews de novo the district court's construction and application of a statute, but reviews the record in the light most favorable to the district court's findings, and will reverse the findings only when left with the definite and firm conviction that a mistake has been made. *Braend v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). "The SCRA is to be 'liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.'" *Reed*, 723 N.W.2d at 54 (quoting *Boone v. Lightner*, 319 U.S. 561, 564, 63 S. Ct. 1223, 1226 (1943)).

The SCRA provides that a court "shall, upon application by the servicemember, stay the action" if the servicemember submits the following:

> (A) A letter or other communication setting forth facts stating the manner in which current military duty requirements materially affect the servicemember's ability to appear and stating a date when the servicemember will be available to appear.
>
> (B) A letter or other communication from the servicemember's commanding officer stating that the servicemember's current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.

50 U.S.C. app. § 522(b)(1)-(2)(A)-(B) (Supp. 2003).

Husband requested a continuance the day before the trial was to resume. In support of his request, husband filed an affidavit and faxed copies of two letters written on Air Force letterhead. The district court found three deficiencies in husband's application: husband failed to state the manner in which his military-duty requirements materially affected his ability to appear, husband failed to submit a letter or communication from his commanding officer, and the letters husband submitted failed to state that military leave was not authorized for husband. On the basis of these deficiencies, the court denied husband's request for a continuance.

Husband argues that his request conformed to the requirements of the SCRA, but he failed to demonstrate that the district court's findings are clearly erroneous. Neither husband's affidavit nor the letters he submitted address the availability of military leave, as required by the SCRA. Furthermore, while husband argues that one of the letters submitted was from his commanding officer, he cites nothing in the record that supports

this assertion. Because husband did not satisfy the requirements of the SCRA, he was not entitled to an automatic stay.

II.

Findings of fact must be upheld unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *see Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992) (applying clearly-erroneous standard to maintenance determination). Factual findings are clearly erroneous when they are manifestly against 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). This court views the record in the light most favorable to the district court's findings of fact. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000). The fact 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.* When there is conflicting evidence, this court defers to the district court's determinations of credibility. Minn. R. Civ. P. 52.01; *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

Verbatim Adoption

"A district court's verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Schallinger v. Schallinger*, 699 N.W.2d 15, 23 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005). But a district court's verbatim adoption of proposed findings raises the question of whether the district court "independently evaluated each party's testimony and evidence." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). When a party alleges that the district court adopted proposed findings verbatim, this court

carefully reviews whether the district court's findings and conclusions are "detailed, specific and sufficient enough to enable meaningful review by this court." *Id.*; *see Dukes v. State*, 621 N.W.2d 246, 258 (Minn. 2001) (stating that when reviewing a court's verbatim adoption of proposed findings, appellate court conducts "a careful and searching review of the record").

Husband initially asserted that the district court improperly adopted wife's proposed findings of fact, conclusions of law, and order for judgment verbatim, but later acknowledged that the judgment differs in at least some respects from wife's proposed order. Because wife's proposed order is not included in the record, we cannot assess the degree of similarity. But we will still examine the district court's findings and conclusions to determine whether they are sufficient to permit review.

Imputed Income

"If the court finds that a parent is voluntarily unemployed or underemployed . . . support shall be calculated based on a determination of imputed income." Minn. Stat. § 518.551, subd. 5b(d) (2004). "However, there must be evidence of choice in the matter of underemployment before income can be imputed under Minn. Stat. § 518.551." *Murphy v. Murphy*, 574 N.W.2d 77, 82 (Minn. App. 1998). It is only appropriate to impute income if the obligor chose to be unemployed or underemployed. *Franzen v. Borders*, 521 N.W.2d 626, 629 (Minn. App. 1994.) "The finder of fact is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its credibility." *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987.) But the district court should consider the evidence that has been

submitted. *See McConnell v. McConnell*, 710 N.W.2d 583, 586-87 (Minn. App. 2006) (reversing and remanding maintenance award because it was based on the district court's erroneous finding that no medical records had been submitted).

It is undisputed that at the time of trial, husband was employed full time by the United States Air Force. It is also undisputed that at the time wife petitioned for the OFP, husband worked part time at a second job as a security guard, but by the time of trial, he no longer had that job. At trial, husband testified that he was prevented by a lawful military order from working a second job. The district court found that husband "failed to provide any evidence" that the Air Force was preventing him from working a second job and imputed income to husband. Because husband provided evidence in the form of his own uncontradicted testimony, this finding is clearly erroneous. Furthermore, even if husband's testimony were found to be not credible, there was no affirmative evidence that he chose to be underemployed. Because there is no evidence in the record that supports a finding that husband was voluntarily underemployed, we reverse the finding that imputes income to husband.

Husband's Expenses

At trial, husband testified that he had monthly expenses of $3,700. On cross-examination, he admitted that his rent, which had been $1,245 per month, had been reduced to $700 per month by the time of trial. Husband also admitted that at the time of trial, he was sharing utility expenses, but he had recently moved and did not know precisely what those expenses would be. The district court found husband's reasonable necessary monthly expenses to be $2,579.

It is not clear from the judgment or the record how the district court reached the $2,579 figure. Because the district court's findings do not indicate how it arrived at the $2,579 figure, the findings are insufficient to permit effective appellate review, and we remand for reconsideration of husband's expenses.

Wife's Expenses

Wife testified to her expenses on the basis of a prehearing statement, which listed monthly expenses of $4,351. Wife testified that her monthly mortgage payment had increased by more than $200 and that her monthly food expenses had increased by $200 to $500. The district court found that wife had "necessary monthly expenses of $4,551.00 per month."

While the district court did not explain the reasoning for its finding, it appears that the court started with the expenses wife claimed in her prehearing statement and added the $200 per month that she testified her mortgage payment had increased. Because the district court's finding is reasonably supported by the evidence, it is not clearly erroneous.

Child-Care Costs

At trial, wife testified that her monthly child-care expenses were $2,414 during months when the children are in school and $3,072 during the summer months. The district court found: "[Wife] has child care costs of $2,414 per month during the school year and $3,072 per month during the summer months, or an average of $2,578.50 per month over the entire year." Husband argues that this finding is erroneous because it was speculative and based on wife's estimates, rather than her actual expenses. But wife

testified that she was already using the school-year child-care arrangements that she testified about. Husband does not cite any evidence that contradicts wife's testimony and has not shown that the district court erred in crediting wife's uncontradicted testimony about her child-care expenses. Because this finding is reasonably supported by the evidence, it is not clearly erroneous.

Husband's Ability to Provide for his Reasonable Needs

The district court found that husband "has sufficient income and property to provide for his reasonable needs." Husband argues that his income is insufficient to meet his needs. However, the court's finding appears in the context of denying husband an award of spousal maintenance. It does not appear that husband ever sought maintenance. Thus, even if the finding is erroneous, husband has not demonstrated any prejudice. *See Bloom v. Hydrotherm, Inc.*, 499 N.W.2d 842, 845 (Minn. App. 1993) (stating that the appellant bears the burden of demonstrating that error is prejudicial), *review denied* (Minn. June 28, 1993).

Maintenance and Support Arrearages

The district court found that as of December 1, 2005, husband was $19,417.34 in arrears on his child-support and maintenance obligations. Husband argues that the district court erred in computing his arrearages because the underlying orders were improperly "based upon income that he did not have." Because we reverse the district court's imputation of income to husband, we remand the issue of arrearages for reconsideration in light of husband's actual net monthly income.

Value of the Homestead

A district court's valuation of an item of property is a finding of fact, and it 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; "it 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) (citing *Hertz*, 304 Minn. at 145, 229 N.W.2d at 44). "[T]he market valuation determined by the trier of fact should be sustained if it falls within the limits of credible estimates made by competent witnesses even if it does not coincide exactly with the estimate of any one of them." *Hertz*, 304 Minn. at 145, 229 N.W.2d at 44.

Husband testified that the parties' home was worth about $285,000. Wife testified that the home was worth about $230,000 and that the parties had no equity in the home. Wife introduced as exhibits a market analysis that showed a $230,000 estimated sale price of the home and property-tax information that showed an assessed value of $227,000. Because the evidence in the record, viewed in the light most favorable to the findings, reasonably supports the district court's finding that the homestead was worth $227,300 and had encumbrances that resulted in nominal equity, the finding is not clearly erroneous.

Nonmarital Property

"Whether property is marital or nonmarital is a question of law, but a reviewing court must defer to the trial court's underlying findings of fact." *Olsen v. Olsen*, 562

N.W.2d 797, 800 (Minn. 1997). Property acquired during the marriage is presumptively marital; a spouse claiming a nonmarital interest must prove that interest by a preponderance of the evidence. *Robert v. Zygmunt*, 652 N.W.2d 537, 541 (Minn. App. 2002) (citing Minn. Stat. § 518.54, subd. 5 (2000); *Olsen*, 562 N.W.2d at 800).

The district court found that husband "failed to provide tracing of any non-marital claim regarding his guitars." To the extent that this finding can be read as concluding that husband failed to meet his burden of proving a nonmarital interest in certain personal property by a preponderance of the evidence, it is reasonably supported by the evidence. Husband testified that he acquired certain property either before the marriage or as a gift during the marriage, and wife testified that the property at issue was purchased during the marriage. The district court apparently credited wife's testimony. We defer to the district court's credibility determinations. *Vangsness*, 607 N.W.2d at 472. Because the district court's findings are reasonably supported by the evidence, they are not clearly erroneous.

Discovery Violations

When a party fails to comply with a discovery order, the court may "make such orders in regard to the failure as are just," including an order providing "that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." Minn. R. Civ. P. 37.02(b)(1). "A district court has broad discretion to issue discovery orders and will be reversed on appeal only upon an abuse of such discretion." *Minn. Twins P'ship v. State by Hatch*, 592 N.W.2d 847, 850 (Minn. 1999)

(quotation omitted). Similarly, "[t]he choice of a sanction for failure to comply with a discovery order is a matter within the trial court's discretion." *Chicago Greatwestern Office of Condo. Ass'n v. Brooks*, 427 N.W.2d 728, 730 (Minn. App. 1988). But the sanction must be no more severe than is necessary to prevent prejudice to the other party. *Id.* at 731.

Before trial, wife obtained an order compelling husband to provide discovery. The order provided that failure to comply would result in findings of fact relative to any information requested in wife's discovery requests being resolved in accordance with wife's claims. Husband argues that the sanction of adverse findings was "to[o] severe and broad-based." But he does not identify a less-severe sanction that would have been sufficient to prevent prejudice to wife. Husband does not argue that the court abused its discretion in issuing the order compelling discovery, which established that a violation would result in adverse findings, and does not show that the court clearly erred in finding that he violated the discovery order. Thus, husband fails to show that the district court's application of adverse findings was an abuse of discretion.

IRS Debts

Wife testified that in August 2004, she received a notice from the IRS stating that she and husband owed $1,776.04 as a result of mistakes in their joint return, which husband had prepared. Wife testified that she received the notice because "[husband] filed inappropriately. I think that he filed saying that he wasn't making as much money as he actually was." The district court found that "[t]he parties incurred an Internal Revenue Service debt of $1,776.04 in 2002 as a result of [husband's] failure to properly

file the parties' tax returns." Husband argues that "there was no evidence at trial to support" the district court's findings. Because wife's testimony reasonably supports the district court's finding, the finding is not clearly erroneous.

Attorney Fees

A district court shall award need-based attorney fees to a party in a marital dissolution if the court finds that (1) the recipient needs the fees for a good-faith assertion of rights; (2) the payor can afford the fees; and (3) the recipient cannot. Minn. Stat. § 518.14, subd. 1 (2006). A district court may, in its discretion, award "additional fees, costs and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." *Id.* An attorney-fee award under Minn. Stat. § 518.14, subd. 1, "rests almost entirely within the discretion of the trial 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). Because the standards for need-based and conduct-based fee awards are different, an order "must indicate to what extent the award was based on need or conduct or both." *Geske v. Marcolina*, 624 N.W.2d 813, 816, 820 (Minn. App. 2001) (remanding for specific findings and instructions to "apportion any fee award among multiple bases for the award, if necessary"); *see Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001) (remanding fee issue, stating lack of findings "preclude[d] effective review" of fee award where district court awarded need-based and conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, but did not indicate how much of the award was for either reason), *review denied* (Minn. Feb. 21, 2001).

The district court made findings that demonstrate that it contemplated both need-based and conduct-based awards and ordered husband to pay wife $23,912.85 for attorney fees. But the district court did not indicate how much of the award was need-based and how much was conduct-based.

We find no basis in the record for concluding that husband had the ability to pay wife's attorney fees. The court found that husband is capable of earning $6,280 per month and ordered him to pay wife a total of $3,772.28 per month for child support, child care, and spousal maintenance, leaving husband $2,507.72 to cover $2,579 in monthly expenses. We reverse the award of need-based fees, and remand for reconsideration of the amount, if any, of conduct-based fees.

III.

While a party may appeal directly to this court from a referee's decision, for purpose of this court's standard of review, failing to seek district court review is equivalent to failing to move for amended findings or a new trial. *Warner v. Warner*, 391 N.W.2d 870, 873 (Minn. App. 1986). "Generally on appeal from a judgment where no motion for a new trial was made, 'the only questions for review are whether the evidence sustains the findings of fact and whether such findings sustain the conclusions of law and the judgment.'" *Novack v. Nw. Airlines, Inc.*, 525 N.W.2d 592, 596 (Minn. App. 1995) (quoting *Gruenhagen v. Larson*, 310 Minn. 454, 458, 246 N.W.2d 565, 569 (1976)). *But see Korf v. Korf*, 553 N.W.2d 706, 709 n.2 (Minn. App. 1996) (addressing, in interest of justice, issue not raised in posttrial motions where neither party objected on appeal and both parties briefed issue). Whether the findings of fact support the conclusions of law

and judgment is a question of law. *Donovan v. Dixon*, 261 Minn. 455, 460, 113 N.W.2d 432, 435 (1962).

Custody

"The district court has broad discretion in making child custody, parenting time, and child-support determinations. . . ." *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002.) Appellate review of custody determinations is limited to determining whether the district court abused its discretion by making findings that are not supported by the evidence or by improperly applying the law. *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996). While "considerable weight is given to stipulations intelligently entered with the benefit of counsel," the paramount consideration in determining custody is always the best interests of the child. *Petersen v. Petersen*, 296 Minn. 147, 148, 206 N.W.2d 658, 659 (1973).

Before trial, the parties agreed that wife would have sole legal and sole physical custody of the four minor children. This stipulation was put on the record at the pretrial hearing and was reiterated by the parties on the first day of trial. It is clear from the record that the parties proceeded under the understanding that wife would be awarded sole legal and sole physical custody. A custody evaluation was completed and appears in the record, though it was not introduced or discussed at trial. The report recommends that wife be awarded sole legal and sole physical custody. The district court granted wife sole legal and sole physical custody on the basis of the parties' stipulation. Because the court did not commit clear error in finding that the parties stipulated to custody, and because the record supports the court's implicit conclusion that the custody award is in

the best interests of the children, the court did not abuse its discretion in awarding wife sole legal and sole physical custody.

Spousal Maintenance

Appellate courts review a district court's maintenance award under an abuse-of-discretion standard. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). A district court abuses its discretion regarding maintenance if its findings of fact are not supported by the record or if it improperly applies the law. *Id.* at 202.

Husband argues that the district court failed to make the findings necessary to support its award of spousal maintenance. Because we reverse the finding that imputes income to husband, we remand for reconsideration the issues of spousal maintenance and maintenance-based life insurance.

Medical Support

Every child support order must "expressly assign or reserve the responsibility for maintaining medical insurance for the minor children and the division of uninsured medical and dental costs." Minn. Stat. 518.171, subd. 1(a)(1) (2004).

> [I]f the court finds that the obligee is not receiving public assistance for the child and has the financial ability to contribute to the cost of medical and dental expenses for the child, including the cost of insurance, the court shall order the obligee and obligor to each assume a portion of these expenses based on their proportionate share of their total net income. . . .

Id., subd. 1(d) (2004). Medical needs of minor children are in the nature of child support. *Korf v. Korf*, 553 N.W.2d 706, 708 (Minn. App. 1996). "The trial court has broad

discretion in determining child support obligations and its decision will not be reversed absent an abuse of that discretion." *Id.*

The district court ordered husband to maintain all existing medical, health, hospitalization, dental, optical, and accident insurance coverage for the children. It also ordered, as additional child support, that husband "be responsible for payment of all medical, hospitalization, optical, dental, psychological and other health expenses for the minor children which are not covered by insurance or by medical assistance." Because we reverse the finding that imputes income to husband, we remand the issue of medical support for reconsideration.

Spousal Insurance

The district court ordered husband to "maintain health care coverage for [wife] under his current health plan" and to pay the costs of coverage. There is nothing in the record that shows the costs of coverage. Husband argues that this order violates Minn. Stat. § 518.171, subd. 2 (2004), which provides: "The court shall require the obligor to provide dependent health and dental insurance for the benefit of the obligee if it is available at no additional cost to the obligor. . . ." Because this statute does not preclude requiring insurance that comes at an additional cost, husband's argument is without merit. But because the spousal-insurance award is in the nature of spousal maintenance and we have remanded the issue of spousal maintenance, we also remand the issue of spousal insurance.

Tax Exemptions

Although the custodial parent presumptively receives the right to claim the dependent children as deductions for tax purposes, the Internal Revenue Code does not preclude state courts from allocating the dependency exemption to a noncustodial parent. *Rogers v. Rogers*, 622 N.W.2d 813, 823 (Minn. 2001). The allocation of federal tax exemptions is within the discretion of the district court and will not be overturned absent an abuse of that discretion. *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999).

The district court ordered that wife be entitled to claim the dependency exemption for the minor children as a deduction for income-tax purposes. Husband argues that this was an abuse of the court's discretion because husband "is without question providing far more than 50% of the children's support." Wife argues that as the custodial parent, the presumption is that she receives the dependency exemptions and that it would be inequitable for husband to benefit from the exemptions when he is more than $19,000 in arrears on his support obligations. The district court's order is consistent with the Internal Revenue Code, and husband has not shown that the district court abused its discretion in awarding wife the exemptions.

Future Proof of Income

The district court ordered husband to annually provide wife with copies of his state and federal income-tax returns and W-2 statements. Husband argues that this order is contrary to Minn. Stat. § 518.551, subd. 5b(b), which provides that while a child-support order is in effect, a party or public agency may require the other party to provide

copies of tax returns but limits requests to not more than one every two years, in the absence of good cause. Wife argues that husband's failure to provide discovery and to comply with the discovery order constitute good cause.

Because Minn. Stat. § 518.551, subd. 5b(b), applies only to requests by parties and public authorities, and does not address the powers of a district court, husband has not shown that the order requiring annual disclosure is an error of law. *See Guyer v. Guyer*, 587 N.W.2d 856, 858-59 (Minn. App. 1999) (declining to address district court order requiring child-support obligor to disclose financial records under Minn. Stat. § 518.551, subd. 5b(b), and holding that even absent a finding that obligor wrongfully failed to disclose information, the order was justified on the basis of the district court's obligation to create an equitable child-support award and ensure that the amount of support continued to be just and proper), *review denied* (Minn. Mar. 30, 1999). Because the district court has a primary obligation to ensure just and proper levels of child support, and because the record shows that husband failed to comply with discovery requests, husband has not shown that the order was an abuse of the district court's discretion.

Child-Support and Child-Care Costs

Husband argues that the district court's orders establishing his child-support and child-care obligations are improperly based on income imputed to him. Because we reverse the imputation of income, we remand the issues of child-support and child-care costs for reconsideration by the district court. We similarly remand the issue of life insurance pertaining to child support.

Waived Issues

Assignment of error based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State by Humphrey v. Modern Recycling, Inc,*. 558 N.W.2d 770, 772 (Minn. App. 1997). Husband challenges the property division, homestead division, disposition of personal property, debt division, division of tax refund and debt, and the restraining order. Because he cites no authority and makes no argument in support of his positions on these issues, they are waived.

IV.

The standard for reviewing whether a moving party made a prima facie case that a dissolution judgment was based on fraud and that there should be an evidentiary hearing to address whether to reopen the judgment is analogous to the standard for reviewing a grant of summary judgment. *Doering v. Doering*, 629 N.W.2d 124, 128-30 (Minn. App. 2001), *review denied* (Minn. Sept. 11, 2001). A motion for summary judgment shall be granted when the record shows that there is no genuine issue of material fact and that a party is entitled to a judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). "On appeal, the reviewing court must view the evidence in the light most favorable to the party against whom judgment was granted." *Id.*

Husband moved to vacate the judgment on the basis of fraud. At the hearing on husband's motion, the district court clarified that the only portions of the judgment that husband was contesting were custody and parenting time. Husband alleges that wife conspired with her attorney to concoct false allegations of domestic abuse that wife used

to obtain the OFP. Husband claims that the court's finding that he committed domestic abuse was based on perjured testimony, and that as a result of this finding, he was unable to fairly litigate the issue of custody. The basis for his claims is a series of e-mails, purportedly between wife and her attorney, that husband claims to have obtained from wife's e-mail account.

Husband claims to have downloaded the e-mails on April 12, 2005. At the pretrial hearing in September, 2005, husband stipulated that wife would receive sole legal and sole physical custody of the children. He also stipulated to a one-year extension of the OFP. When the trial began on November 2, 2005, the parties repeated their agreement that wife would receive sole custody. It was not until the trial resumed on December 1, 2005, that husband's attorney indicated that husband "no longer agrees to what the parties had mediated [regarding custody and visitation] because of the lack of visitation and contact that's occurred, and he wanted that reopened and addressed." Husband did not raise the issue of fraud until he filed his motion to vacate on February 28, 2006. The district court denied the motion to vacate without holding an evidentiary hearing.

Even if we assume that wife obtained the OFP by testifying falsely, the custody awards in the dissolution judgment were based on husband's express stipulation. The alleged e-mail messages between wife and her attorney were in husband's possession by April 2005, but he did not raise the issue of fraud either in the OFP proceeding or the dissolution. Instead, husband stipulated to custody and to an extension of the OFP. The custody award resulted not from the finding of domestic abuse, but from husband's stipulation. Because even when husband's allegations are taken as true, he has failed to

show a basis for vacating the custody award for fraud, the district court did not err in denying his motion without an evidentiary hearing.

V.

Wife moves for need-based and conduct-based attorney fees on appeal. *See* Minn. Stat. § 518.14, subd. 1 (governing attorney-fee awards in divorce actions). In light of the results obtained on appeal, we conclude that wife failed to establish that husband has the means to pay appellate fees or that husband unreasonably contributed to the length or expense of appellate proceedings. Accordingly, we deny wife's motion for appellate attorney fees.

Affirmed in part and reversed and remanded in part; motion denied.