STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2319

In re the Marriage of:
Maria del Pilar Hartshorn, petitioner,
Respondent,

vs.

Evan Lawrence Hartshorn,
Appellant.

Filed February 10, 2009
Affirmed
Collins, Judge[*]

Nobles County District Court
File No. 53-FA-06-595

Larry Lucht, Lucht Law Offices, 906 Third Avenue, Worthington, MN 56187; and

Mark T. Steffan, Steffan Law Office, 201 Second Avenue Southwest, Pipestone, MN 56164 (for respondent)

Evan Hartshorn, N5062 860th Street, Ellsworth, WI 54011 (pro se appellant)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Evan Hartshorn, appealing pro se, (1) contends that the district court abused its discretion in the conduct of the hearings and (2) challenges the district court's findings and conclusions. Seeing no abuse of discretion or error on the part of the district court and because the findings and conclusions are supported by the record, we affirm.

D E C I S I O N

I.

Respondent Maria del Pilar Hartshorn petitioned for dissolution of the parties' marriage in May 2006. At the outset, appellant was represented by counsel, who withdrew shortly before the scheduled trial in February 2007. The district court encouraged appellant to retain new counsel by granting his request for a continuance to do so. In the meantime, on March 19, 2007, appellant filed a pro se motion for parenting time for hearing on March 26. At the hearing, appellant was precluded from presenting testimony in support of the motion because he had not sought leave to do so. *See* Minn. Gen. R. Prac. 303.03(d) (requiring motions in noncontempt proceedings to be "submitted on affidavits, exhibits, documents subpoenaed to the hearing, memoranda, and arguments of counsel unless otherwise ordered by the court for good cause shown"). Moreover, because the motion was not timely served and respondent objected, the district court declined to consider the motion altogether. *See* Minn. Gen. R. Prac. 303.03(a)(1) (requiring motions to be served at least 14 days before hearing). Before concluding the hearing, the district court again urged appellant to secure trial counsel.

Appellant first argues that, at the March 26 hearing, the district court's recommendation to obtain legal counsel amounts to duress, which ultimately led to an unfair trial. "Duress" is defined as a "threat of harm made to compel a person to do something against his or her will or judgment; esp[ecially], a wrongful threat made by one person to compel a manifestation of seeming asset by another person to a transaction without real volition." *Black's Law Dictionary* 542 (10th ed. 2004). But appellant does not cite to, nor does our careful review of the record reveal, anything approaching duress on the part of the district court. Although the district court expressed its dismay with appellant's stated inability to obtain affordable counsel despite having been granted a continuance to do so, it is apparent that the district court's continued urging of appellant to obtain counsel was merely consistent with the interests appellant had in preparing and effectively presenting his case at trial.

II.

Appellant next argues that the district court was biased against appellant because of his affinity for Native American religious practices, and as a result, the district court unfairly assessed appellant's credibility in weighing the evidence. This argument stems from the following statement made by the district court in its memorandum accompanying the findings: "Despite his advanced education [appellant] has remained essentially unemployed or underemployed, choosing, instead, to devote much of his time to performing 'traditional dances' with an Indian tribe in Prior Lake." But this statement is written in the context of the district court's analysis of the history of appellant's

financial contributions to the marital estate. Nothing in the memorandum—or elsewhere in the record—reasonably hints of religious bias on the part of the district court.

Appellant also argues that the district court made erroneous findings of fact. A district court's factual findings will not be disturbed absent clear error. Minn. R. Civ. P. 52.01. A finding is "clearly erroneous" if, on review, we are "left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted). When reviewing the findings for clear error, we consider the record in the light most favorable to the findings and defer to the fact-finder's credibility determinations. *Id.* A finding is not clearly erroneous simply because there is also evidence in the record to support a finding other than that made by the district court. *Id.* at 474.

Here, appellant challenges certain findings of fact and he disputes the resulting impression that he had left his family by moving out of the family home in Luverne as early as 2001. Respondent testified that appellant moved to the Minneapolis area to find work while she and the children remained in Luverne and, over time, appellant returned to Luverne less often beginning in 2001. Appellant offered evidence that he did not move out of the family home until January 2007.

After hearing the testimony of both parties, the district court found that "[appellant] initially came back to Luverne nearly every weekend to visit the children but gradually began to spend less time with the family and . . . has been absent from the household of [respondent] and children and has resided in the Minneapolis area since 2001," and "[appellant] is currently employed at UPS in Eden Prairie."

When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal. *Haefele v. Haefele*, 621 N.W.2d 758, 763 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

The district court is in a superior position to evaluate a witness's credibility; unlike an appellate court, the district court has the opportunity to personally observe the witnesses' demeanor and gauge their relative candor while testifying. *Nelson v. Nelson*, 291 Minn. 496, 497, 189 N.W.2d 413, 415 (1971). Acting in its traditional role of weighing the evidence, the district court was entitled to believe the evidence presented by one party over another party. Based on our review of the record, the district court's findings of fact are not erroneous.

III.

Appellant next challenges the exclusion of documents supporting his arguments against the children being permitted to travel to Ecuador with respondent. Whether to exclude evidence is a matter within the district court's sound discretion. *Pedersen v. United Servs. Auto. Ass'n*, 383 N.W.2d 427, 430 (Minn. App. 1986). We will not disturb an evidentiary ruling unless the district court abused its discretion. *Id.* Moreover, even if the district court did err by excluding the evidence, we will not reverse unless the erroneous exclusion was prejudicial; and to be prejudicial, there must be a reasonable possibility that the erroneous evidentiary ruling changed the trial's outcome. *Foust v. McFarland*, 698 N.W.2d 24, 33 (Minn. App. 2005), *review denied* (Minn. Aug. 16, 2005).

One of the issues at trial was whether respondent would be permitted to take the children to Ecuador to visit family and friends on an annual basis. The parties met and were married in Ecuador and they lived there until moving to Minnesota after their first child was born. The excluded documents are printouts from internet websites, offered without foundation, purportedly warning of the dangers of traveling in Ecuador. The district court properly refused admission of the documents for lack of foundation. Moreover, we cannot conclude that these documents would have materially affected the trial's outcome inasmuch as appellant was permitted to testify about potential dangers in Ecuador based on his experience living there. *Cf. State v. Stevens*, 248 Minn. 309, 316, 80 N.W.2d 22, 28 (1956) (stating that exclusion of testimony is not prejudicial when it is "merely cumulative of testimony already given by another witness"). Thus, even if the district court abused its discretion by excluding these documents, appellant was not prejudiced.

IV.

Appellant also challenges the district court's decision to adopt respondent's proposed parenting-time plan over his. Beyond vague conclusory allegations that his proposed plan is "better" in terms of the best interests of the children and that respondent does not cooperate with him, it is difficult to discern the substance of appellant's argument. Although we often accord latitude to a pro se party who has failed to comply with the rules governing the contents of a brief, it is nonetheless appellant's responsibility to provide this court with sufficient information "to enable us to review questions he desires to raise on appeal." *Noltimier v. Noltimier*, 280 Minn. 28, 29, 157 N.W.2d 530,

531 (1968) (requiring pro se appellants to provide the "material necessary for an understanding of the issues"). Here, the conclusory assertions of error in appellant's brief do not adequately inform us of the issue he desires to raise. We treat such assertions of error as waived and will not consider them on appeal "unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co*., 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971). Because no prejudicial error is apparent, we deem appellant to have waived the issue.

V.

Finally, appellant argues that the district court erred by "not allowing [him] to speak" at the hearing on his posttrial motion for amended findings, or alternatively a new trial, which appellant claims resulted in his inability to enter "Exhibit 6." Although new evidence may be considered in a new-trial motion following a bench trial, Minn. R. Civ. P. 59.01, there is no indication in the transcript of that hearing that appellant attempted to offer "Exhibit 6" in support of his motion; indeed, it is not even clear what "Exhibit 6" refers to. And there is no indication that appellant attempted to speak but was prevented from doing so by the district court. This argument therefore fails for lack of support in the record.

Affirmed.