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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1491**

In re the Marriage of:
Carol Jayne Hamilton, petitioner,
Respondent,

vs.

Steven Dale Hamilton,
Appellant.

**Filed August 18, 2009
Affirmed
Schellhas, Judge**

Mower County District Court
File No. 50-FA-06-3325

Dean K. Adams, Adams, Rizzi & Sween, P.A., 300 First Street Northwest, Austin, MN
55912 (for respondent)

David W. VanDerHeyden, David W. VanDerHeyden and Associates, P.A., 302 Elton
Hills Drive Northwest, Suite 300, P.O. Box 6535, Rochester, MN 55903 (for appellant)

Considered and decided by Larkin, Presiding Judge; Schellhas, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

In this dissolution action, appellant challenges the district court's division of property, determination of child support, apportionment of marital debt, and award of attorney fees. We conclude that the district court did not abuse its discretion in

apportioning marital debt or awarding attorney fees to respondent and that appellant has waived his other arguments on appeal by failing to raise them before the district court. Accordingly, we affirm.

FACTS

Appellant-husband Steven Dale Hamilton and respondent-wife Carol Jayne Hamilton were married for approximately 24 years when respondent petitioned for dissolution of their marriage in September 2006. At that time, three of the parties' four children were minors and the fourth was an adult. The parties moved the district court to establish temporary child custody and child support. The district court issued a temporary order in July 2007, granting custody of the minor children and occupancy of the homestead to respondent, requiring appellant to pay child support, and providing that the parties would be responsible for their own living expenses.

Appellant's attorney withdrew in August 2007, and appellant appeared pro se at trial in January 2008. After trial, the district court awarded respondent custody of the minor children and exclusive occupancy of the homestead until the children reached age 18 and ordered that the homestead then be sold with the sale proceeds split equally between the parties. The court assigned the parties' outstanding homestead real estate taxes and sewage-treatment-system indebtedness, totaling approximately \$10,656 in debt, to respondent. The court assigned the remainder of the parties' unsecured marital debt, including credit-card debt, totaling approximately \$14,471, to appellant. The court also ordered appellant to pay child support and one half of respondent's attorney fees.

Appellant obtained substitute counsel, who moved for a new trial and amended findings of fact and conclusions of law. The district court reopened the issues of child support and attorney fees, but declined to consider other issues raised in appellant's motion, reasoning that appellant's claims were based on evidence that he should have submitted at trial, but did not, and that the evidence introduced at trial supported the findings made about each issue except for child support. The court agreed to consider new evidence as to the parties' incomes, potential imputed incomes, and offsets to child support based on the payment of health-insurance premiums. The parties presented their evidence at a June 2008 hearing.

After the hearing, the district court issued new findings, increasing the income of both parties, which resulted in an increase in appellant's child-support obligation. The court rejected appellant's request for a child-support offset for payment of the premiums for the children's health insurance because the premiums did not affect appellant's take-home pay. The court changed its award of attorney fees. Based on its finding that appellant "unnecessarily contributed to the length and cost" of the proceedings by attempting to introduce evidence in post-trial motions that should have been submitted at trial, the court ordered appellant to pay respondent \$1,000 in attorney fees. This appeal follows.¹

¹ While this appeal was pending, respondent died in a motor-vehicle accident. No personal representative was appointed with the authority to file a brief on respondent's behalf, but this court allowed this appeal to proceed under Minn. R. Civ. App. P. 142.03; *see* Minn. R. Civ. App. P. 143.02 (addressing death of a party to an appeal). At oral argument, appellant withdrew the argument in his brief that the district court's award to respondent of rent-free occupancy of the homestead was inequitable and unjust.

DECISION

Appellant argues that the district court abused its discretion in failing to consider respondent's occupancy of the homestead and its fair rental value when it set appellant's child-support obligation. Noncash contributions, including the fair rental value of the homestead, "can be considered in some cases to be in the nature of child support." *Moylan v. Moylan*, 384 N.W.2d 859, 865 (Minn. 1986). But the record contains no evidence about the fair rental value of the homestead. Although appellant submitted to the district court an appraisal of the homestead, the appraisal does not establish the fair rental value of the homestead. See *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (stating that a party cannot complain on appeal about an unfavorable ruling when the party failed to provide the district court with evidence necessary to address the question presented), *review denied* (Minn. Nov. 25, 2003). Moreover, appellant submitted an affidavit in support of his motion for a new trial or amended findings that stated that the homestead was in need of extensive repairs and was in danger of becoming "unsafe to live in." This evidence suggests that the homestead had very little fair-rental value. The district court reasonably rejected this argument.

Appellant next argues that: (1) the assignment to him of the parties' outstanding 2007 real estate taxes violated the district court's temporary order, which provided that the parties would be responsible for their own bills and living expenses; (2) some of the credit-card debt assigned to him was incurred by respondent to pay for her living expenses after the parties' separation; and (3) the district court incorrectly credited respondent with the homestead sewage-treatment-system debt in the amount of \$8,000

and that the actual balance of the debt should have been \$3,200. The record does not reflect that appellant raised these arguments at trial or presented any evidence at trial to support them. We therefore decline to consider these arguments. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a reviewing court will generally not consider issues not presented to and considered by the district court); *Eisenschenk*, 668 N.W.2d at 243 (stating that a party that failed to provide the district court with evidence necessary to address the question presented cannot complain on appeal about an unfavorable ruling).

Finally, appellant argues that the district court abused its discretion in awarding attorney fees to respondent. First, appellant claims that the district court failed to make required findings of fact supporting the award. In awarding need-based attorney fees, a district court is required to find that (1) the fees are necessary for the good-faith assertion of a party's rights and will not contribute unnecessarily to the length and expense of the proceeding, (2) the party ordered to pay the fees has the means to pay them, and (3) the party awarded the fees does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2008). But a district court may, "in its discretion," award conduct-based attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." *Id.*

In awarding attorney fees to respondent, the court stated that:

This matter began in 2006 and was delayed when [appellant's] first attorney withdrew. Discovery had already been completed. [Appellant] was given ample time to procure new counsel or represent himself. He chose to represent himself and, despite the prior completion of discovery, introduced very little evidence at trial in January 2008. Instead, he attempted to introduce new evidence after trial

through motions to amend the findings or for a new trial. [Appellant's] actions have unnecessarily contributed to the length and cost of these proceedings and an award of attorney's fees to [respondent] is appropriate.

Based on the district court's findings, we conclude that the court did not abuse its discretion in awarding conduct-based attorney fees to respondent.

Second, appellant claims that the district court abused its discretion in awarding attorney fees to respondent without a motion as required by Minn. R. Gen. Pract. 119.01. Rule 119.01 provides that an attorney seeking an award of attorney fees in the amount of \$1,000 or more must request attorney fees by motion. Here, the record reflects that the district court awarded conduct-based attorney fees to respondent sua sponte. Moreover, rule 119 "is not intended to limit the court's discretion, but is intended to encourage streamlined handling of fee applications and to facilitate filing of appropriate support to permit consideration of the issues." Minn. R. Gen. Pract. 119 1997 advisory comm. cmt.; *see also Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999) (concluding that a district court may waive the requirements of rule 119). The district court did not abuse its discretion in awarding attorney fees to respondent.

Affirmed.