STATE OF MINNESOTA
IN COURT OF APPEALS
A11-146

Jane Ann Kuske,
n/k/a Jane Ann Holm,
petitioner,
Respondent,

vs.

Stephen Edward Kuske,
Appellant.

Filed August 8, 2011
Affirmed
Shumaker, Judge

Dakota County District Court
File Nos. 19-F1-06-008876, 19-F7-06-012091,
19-F7-07-013638, 19-K6-06-003933,
19-KX-08-000392, 19AV-CV-09-3074,
19AV-CV-09-3339

Jane A. Holm, Eagan, Minnesota (pro se respondent)

James C. Backstrom, Dakota County Attorney, Tina K. Isaac, Valisa Lynette McKinney, Assistant County Attorneys, West St. Paul, Minnesota (for respondent Dakota County)

Stephen Edward Kuske, Fairmont, Minnesota (pro se appellant)

Considered and decided by Shumaker, Presiding Judge; Worke, 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

SHUMAKER, Judge

In this child-support and custody dispute, pro se appellant father argues that the district court abused its discretion by denying the following motions made by appellant: (1) to refund him for certain payments of child support because interest was improperly charged; (2) to modify parenting time and to change the names of the parties' children; (3) to remove the district court judge from the case for bias; (4) to modify child support in the expedited process; and (5) requesting transcripts of the divorce trial in this matter and to waive transcript costs. Appellant also argues that the nature of the family court system and the district court's rulings have alienated his children from him. We affirm.

FACTS

We begin our consideration of this pro se appeal by noting that appellant Stephen Kuske has failed to comply with the Minnesota Rules of Civil Appellate Procedure in several respects, and that failure has made meaningful review questionable. We recognize that appellant is not represented by an attorney on appeal, but he is still subject to our rules. *See Gruenhagen v. Larson*, 310 Minn. 454, 460, 246 N.W.2d 565, 569 (1976) (stating that the court will not modify rules and procedures to accommodate a pro se party who lacks the skill and knowledge of an attorney).

There are various problems with appellant's brief. Although appellant submitted an informal brief, it did not fully comply with the rules, as it did not include an appendix that contained all relevant pleadings, motions, orders and judgments. *See* Minn. R. Civ. App. P. 128.01, subd. 1 (describing the requirements of appellant's informal brief),

130.01, subd. 1 (listing the requisite contents of appellant's appendix). Appellant has failed to cite any legal authorities for his arguments. Under our rules, such failure waives the issues raised. *State v. Meldrum*, 724 N.W.2d 15, 22 (Minn. App. 2006), *review denied* (Minn. Jan. 24, 2007). He has not cited to the record, and it appears that at least some of the issues he has raised are outside the record and, therefore, beyond our authority to review. "[I]f an allegation is outside of the record, it must be disregarded." *Id.* Despite these significant deficiencies and the failure of respondent Jane Holm to file a brief in response to the appeal, we will attempt an appellate review to the extent possible.

On February 11, 2009, the district court ordered the dissolution of the parties' marriage. Based on the evidence presented in the dissolution proceeding, the court granted to the parties joint legal custody of their three minor children and sole physical custody to respondent. Both parties made subsequent motions for amended findings, and the court entered an amended judgment on August 10, 2009. Among other things, the court ordered appellant to pay child support.

Appellant became unemployed on July 25, 2009, and on May 18, 2010, he moved the district court for an order "via expedited process without a hearing to stop interest from accruing on the remaining child support debt or arrearage." The district court referred the matter to a child-support magistrate (CSM) who considered the motion without a hearing. The CSM granted the motion in part, providing that child-support interest would be stayed effective May 19, 2010. On appeal, appellant contends that the

CSM erred in not terminating interest as of the date of his unemployment and that the district court "rubberstamped" the CSM's order.

On September 16, 2010, appellant filed a motion "For Children's Rights to spend time with their Father and restoration of birth names and removal of judge." In his motion, appellant asked that no hearing be held to address the issues raised. The district court wrote a letter to appellant informing him that the court would not rule on the motion without a hearing, and that appellant could call to schedule a hearing and provide notice to respondent. On appeal, appellant alleges that a hearing had been scheduled and that the court cancelled and then falsely alleged that appellant cancelled it.

Appellant also raises issues regarding his effort to remove the district court judge from the case, the district court's scheduling order, and the district court's refusal to grant to appellant in forma pauperis status so that he could obtain transcripts of court proceedings.

D E C I S I O N

This court reviews the district court's decisions in a child-support matter for an abuse of discretion. *Davis v. Davis*, 631 N.W.2d 822, 826 (Minn. App. 2001). A ruling that is against logic and the facts on record exhibits an abuse of discretion, *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984), as does a misapplication of the law, *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998).

Appellant appears to argue that the district court abused its discretion in denying his motion for a refund for overpayments of child support because interest was charged,

asserting that "[the district court] is in violation of [Minn. Stat. §] 548.091, subd. 1a(e) for charging interest on this Title IV-D case."[1]

Minn. Stat. § 548.091, subd. 1a(e) (2010), states that "the public authority must suspend the charging of interest" if (1) the obligor makes a request that interest accrual be suspended, (2) "the public authority provides full IV-D child support services," and (3) "the obligor has made, through the public authority, 12 consecutive months of complete and timely payments of both current support and court-ordered paybacks of a child support debt or arrearage." Minn. Stat. § 518A.39, subd. 2(e) (2010), states that "[a] modification of support . . . , including interest that accrued pursuant to section 548.091, may be made retroactive . . . only from the date of service of notice of the motion on the responding party and on the public authority."

The record indicates that this is an IV-D case. The CSM correctly found that appellant served the motion to modify support on respondent on May 19, 2010, and appellant does not now suggest otherwise. It is clear that appellant simply failed to effectuate his statutory right until May 19, 2010. Therefore, the CSM did not abuse her discretion in granting appellant's motion to suspend interest retroactively to May 19, 2010, the date that notice of the motion was served (instead of July 25, 2009, as appellant requested).

[1] A Title IV-D case is defined as "any proceeding where a party has either (1) assigned to the State rights to child support because of the receipt of public assistance as defined in Minn. Stat. § 256.741, subd. 1(b) (2006), or (2) applied for child support services under Title IV-D of the Social Security Act, 42 U.S.C. § 654(4) (2006)." Minn. R. Gen. Pract. 352.01(g).

Appellant also asserts that his child-support payments "were complete and timely per court orders before April 2007." The CSM acknowledged that appellant filed an earlier request to stay the interest on arrearages, which was addressed by the district court in an order dated October 15, 2009. At that time the district court denied appellant's request, finding that appellant had not made 12 months of consecutive payments, as required by the statute. *See* Minn. Stat. § 548.091, subd. 1a(e). The October 15, 2009 order is not listed in appellant's notice of appeal and, therefore, is beyond the scope of review of this court. *See* Minn. R. Civ. App. P. 103.01, subd. 1(a) (stating that a notice of appeal must specify order or judgment from which appeal is taken). Nor will this court now exercise its discretion to extend review to that order. *See* Minn. R. Civ. App. P. 103.04 (reciting the scope of review on appeal, and noting that an appellate court may review any issue in the interests of justice). Furthermore, appellant never appealed the October 15, 2009 order, and the time to appeal that order has expired. *See* Minn. R. Civ. App. P. 104.01, subd. 1 (stating that time to appeal an order expires "60 days after service by any party of written notice of its filing"); *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 765 (Minn. 2005) ("It is axiomatic that a judgment or appealable order becomes final if a timely appeal is not taken.").

Appellant contends that he is "appealing [the district court's] 2011-01-19 refusal to issue an order on Children's Rights," and raises the issue of his attempts to remove the district court judge from the case.

On September 16, 2010, appellant filed a motion with the district court that appears to be a request to modify parenting time, to change the names of the children, and

to remove the district court judge from the case. Under the general rules of family court procedure, "[a]ll motions shall be accompanied by either an order to show cause or by a notice of motion which shall state, with particularity, the time and place of the hearing and the name of the judge, referee, or judicial officer, as assigned by the local assignment clerk[,]" and the party who obtains a date and time for hearing shall give notice of the date and time to all other parties. Minn. R. Gen. Pract. 303.01(a).

But in his initial motion, appellant requested, with emphasis, that there be no hearing. Apparently he felt that scheduling a hearing would allow respondent to "inject new perjury without ample time for [appellant] to respond" and that a hearing was not necessary because the judge had enough evidence before him to make a decision. In a letter dated November 15, 2010, the district court wrote to appellant, stating that as appellant requested, the hearing scheduled for November 15, 2010, had been cancelled, and the court would not issue a ruling on appellant's motions absent a hearing. Although appellant states in his appellate brief that he "never cancelled the hearing as [the district court judge] falsely alleged in a letter," he has pointed to nothing in the record to support this assertion, and our efforts to identify anything to support the allegation have been futile. Appellant's notice of motion did not include the time and place for a hearing or the name of the assigned judge or otherwise comply with the applicable rules, and the district court properly declined to address appellant's motion without a hearing. And because the district court never addressed appellant's motion, there is no decision for this court to review. *See generally Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)

(stating that appellate courts generally do not address questions not presented to and considered by the district court).

"A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." Minn. Code Jud. Conduct, Rule 2.11(A). A district court judge is presumed to have discharged all judicial duties properly. *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). Such presumption is overcome only if the party alleging bias provides evidence of favoritism or antagonism. *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). "[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of . . . current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion." *Id.* (quotation omitted). In addressing claims of judicial bias, this court looks at the totality of circumstances, considering "whether the trial judge considered arguments and motions made by both sides, ruled in favor of a complaining [party] on any issue, and took actions to minimize prejudice to the [party]." *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008).

Appellant sought to remove the district court judge twice during the course of this proceeding. His first request was that the judge remove himself from presiding over this matter. The judge heard the request on April 2, 2008, and denied it. Upon review of the district court judge's decision not to remove himself, the chief judge of the district court affirmed the denial in an order dated June 10, 2008, and appropriately characterized this matter as follows: "This has been a very aggressively litigated contested child custody dissolution matter. Multiple motions, hearings, attorneys and experts have been

involved. The parties apparently have a volatile relationship and each accuses the other of conduct detrimental to the best interests of the children." The chief judge quoted this same language in an order dated November 17, 2010, denying appellant's second request to remove the district court judge. Appellant now appeals the November 17, 2010 order.

As he did in 2008, appellant asserts that the district court judge prejudged the case because of comments made during hearings in 2006 and 2008. As the chief judge found, these comments, when considered in context, amount to observations and recommendations by the district court judge that the parties should listen to the advice of their attorneys, that they should settle the matter, and that litigating a prolonged dissolution matter can be very expensive. Appellant focuses on the judge's use of the word "fury," but in context the word was used in a warning to both parties not to use the children "as pawns" in this marriage dissolution.

Appellant next argues that the district court judge exhibited bias by disregarding the opinions of experts appointed by the court with regard to parenting time and other issues related to the children, and that he has refused to appoint a neutral parenting consultant "with ADR powers." But the record shows that throughout this proceeding the judge appropriately appointed neutral evaluators and allowed the parties to hire their own expert evaluators. He then carefully considered the opinions of the experts and doctors involved in this case to reach child-custody and parenting-time arrangements that are best for the children. Appellant's own expert, whom he had hired to make custody recommendations to the court, testified that applying the statutory best-interests-of-the-children standard resulted in a "slam dunk" award of sole legal and physical custody to

respondent. Appellant's expert also stated on the record that appellant had been lobbying him repeatedly to find intentional alienation on the part of respondent, but that such intentional alienation has not taken place. Appellant has failed to identify anything in the record to support his allegations and, as explained above, the actual record shows the opposite of what he contends.

Appellant also argues that the district court judge exhibited bias towards him by "mak[ing] boasts to both parties to maliciously appear as unprejudiced," and that "99%" of his decisions favor respondent and "80-90% of the orders were written by [respondent's] attorney." But adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). Furthermore, appellant's assertions are unsupported by the record. As part of the marriage dissolution decree of February 11, 2009, the judge granted sole physical custody to respondent, but awarded joint legal custody of the children to the parties. The judge agreed that granting sole legal custody to respondent would not be appropriate because it would result in appellant being "pushed out of the picture and [appellant] would not have a role in parental decision making." The judge found that it would be in the best interests of the children to phase out supervised visits with appellant and move toward unsupervised visits as quickly as possible in order to create a normal relationship between the children and appellant. This ruling reflects a paramount concern for the welfare of the children while balancing appellant's right to continue as an involved parent.

Appellant further asserts that the district court judge was biased because he ordered that the children be transferred from parent to parent at a police station.

Appellant does not make clear how this demonstrates bias against him. The record shows that the judge had previously granted to appellant his choice of a supervised-visit location over the objection of respondent, and that his order to have transfers of the children take place at a police station was in response to appellant's own conduct. An expert had recommended stringent protocol for the parties to follow during exchange and visitation, which the court implemented. But appellant violated the protocol by attempting to renegotiate the duration of visits, exchange locations, and times for pick-up of the children. Appellant also recorded the children on audiotape and videotape during the visits, got into disputes with the children during visits, and at one point refused to take one child for visitation. A fair reading of the record shows that the district court judge's decisions were motivated by concern for the children, not by bias against appellant.

Appellant makes other arguments that are not properly before this court but we address each one briefly.

First, appellant "request[s] the dismissal" of the district court's March 21, 2011 order, which he claims denied his motion to modify child support in the expedited process. This order, however, is not listed in appellant's notice of appeal and is beyond the scope of review of this court. *See* Minn. R. Civ. App. P. 103.01, subd. 1(a). And we decline to exercise our discretion under Minn. R. Civ. App. P. 103.04 to review that ruling. Furthermore, the March 21 order did not deny appellant's motion, but merely scheduled a date for a hearing on the matter. And, based upon a subsequent order issued by the district court on March 23, the March 21 order is no longer in effect. It is not clear why appellant is now asking that we dismiss the order.

Second, appellant requests that we reverse the district court judge's order dated December 15, 2010, denying his request for transcripts of the divorce trial in this matter and to waive transcript costs. But this court already addressed these issues in orders dated March 2, 2011, and March 17, 2011. Appellant then petitioned the Minnesota Supreme Court for review, which was denied. There is no need for this court to address the issues again. *See* Minn. R. Civ. App. P. 140.01 (stating that "[n]o petition for rehearing shall be allowed in the court of appeals").

Finally, we note that appellant's "arguments" on appeal are not truly legal arguments, as required, but mostly are rants, laced generously with personal invective against the presiding district court judge. Furthermore, appellant's nearly total disregard of the rules applicable to the district court, as well as those governing this appeal, has created many of the problems for which appellant now blames the court and the legal system. We find no demonstrated merit in any of his contentions, and, despite the fact that his noncompliance with the rules should have resulted in a dismissal of the appeal, we attempted an appellate review in the interests of justice.

Affirmed.