STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0897

In re the Marriage of:
David Allan Kotz, petitioner,
Respondent,

vs.

Edna Vassilovski,
Appellant,

Merill Lynch, et al.,
Respondents.

Filed March 3, 2014
Affirmed
Peterson, Judge

Carver County District Court
File No. 10-FA-09-217

David Allan Kotz, Chanhassen, Minnesota (pro se respondent)

Edna Vassilovski, Chanhassen, Minnesota (pro se appellant)

Eric Robert Sherman, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondents Merill Lynch, et al.)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

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

PETERSON, Judge

Pro se appellant-mother Edna Vassilovski challenges the district court's decisions (1) denying her motion to remove the judge for bias, (2) awarding respondent-father David Kotz the income-tax dependent exemption for one of the parents' children, (3) refusing to enforce the parents' dissolution judgment, (4) addressing matters she asserts were not before the district court, (5) ordering respondents Merrill Lynch, et al., to liquidate an account of the parents and requiring her to pay for the court appearance of a Merrill Lynch employee, and (6) denying her an award of conduct-based attorney fees. We affirm.

D E C I S I O N

Resolving this appeal was needlessly complicated by the parents' unhelpful briefing.[1] We address the comprehensible portions of the parents' arguments to the

[1] Both parents are pro se. Pro se parties are usually held to the same standards as attorneys. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Parts of their briefs are illogical or incomprehensible. Aspects of their briefs also lack candid recitations of facts or citation to relevant legal authorities or both. *See* Minn. R. Civ. App. P. 128.02, subd. 1(c) (requiring an appellant's brief to state the facts "fairly [and] with complete candor," and stating that if an appellant asserts that "a finding of fact or other determination" is not supported by the record, that appellant "shall" summarize the evidence "tending directly or by reasonable inference to *sustain* [the challenged finding]") (emphasis added); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 290 Minn. 518, 519-20, 187 N.W.2d 133, 135 (1971) (stating that an "assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection"); *Braith v. Fischer*, 632 N.W.2d 716, 725 (Minn. App. 2001) (applying *Schoepke* in a family-law appeal), *review denied* (Minn. Oct. 24, 2001). We decline to consider issues that are inadequately briefed. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an issue

extent they are either properly before this court or justice requires us to do so. *Cf. Engquist v. Wirtjes*, 243 Minn. 502, 503, 68 N.W.2d 412, 414 (1955) (noting that "[t]he function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right. If the length of judicial opinions is to be kept within reasonable bounds, appellate courts must more closely adhere to the purpose for which they exist"); *Wilson v. Moline*, 234 Minn. 174, 182, 47 N.W.2d 865, 870 (1951) (stating that the function of an appellate court "does not require [it] to discuss and review in detail the evidence for the purpose of demonstrating that it supports the trial court's findings" and an appellate court's "duty is performed when [it] consider[s] all the evidence, as we have done here, and determine[s] that it reasonably supports the findings"); *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004) (applying *Wilson* in a family-law appeal).

I.

Despite mother's failure to seek a writ of prohibition to challenge the denial of her motion to remove the district court judge for bias, we will briefly address her arguments on the point. *See Hooper v. State*, 838 N.W.2d 775, 789-90 & n.4 (Minn. 2013) (declining to address whether failure to seek a writ of prohibition waived a challenge to a denial of a motion to remove a judge for cause, and addressing the merits of the

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absent adequate briefing); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007) (citing *Wintz* in a family-law appeal). Moreover, because father did not file a notice of related appeal, we address his arguments only to the extent that they address issues raised by mother. *See City of Ramsey v. Holmberg*, 548 N.W.2d 302, 305 (Minn. App. 1996) (stating that, absent a notice of related appeal, an issue raised by a respondent would not be addressed), *review denied* (Minn. Aug. 6, 1996).

question). Absent "an affirmative showing of prejudice[,]" a judge who has presided in a case cannot be removed. Minn. R. Civ. P. 63.03; *see Roatch v. Puera*, 534 N.W.2d 560, 563 (Minn. App. 1995) (addressing standard used to decide whether to remove a judge). We will not alter a district court's removal decision absent an abuse of discretion. *Haefele v. Haefele*, 621 N.W.2d 758, 766 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

Mother's assertion of bias is based on what she claims were improper ex parte contacts by the judge. Even if the contacts were improper, mother failed to show that the chief judge of the district (who recounted the events surrounding those contacts) clearly erred in finding that there was no prejudice to mother arising from the contacts. While a judge has a duty under Rule 2.2 of the Minnesota Code of Judicial Conduct to be fair and impartial, the comment to that rule states that a judge does not violate the rule by making "reasonable accommodations" for pro se litigants. Our detailed review of the record shows that this is what the district court was doing when it made the challenged contacts, and that the district court exercised great restraint and acted fairly in dealing with these contentious parents. *See McClelland v. McClelland*, 359 N.W.2d 7, 11 (Minn. 1984) (stating that "a judge is not required to step down upon allegations of a party which themselves may be unfair"); *Carlson v. Carlson*, 390 N.W.2d 780, 785 (Minn. App. 1986) (making a similar statement), *review denied* (Minn. Aug. 20, 1986). The chief

judge of the district court did not abuse his discretion by declining to remove the district court judge.[2]

II.

Asserting that the district court had previously resolved the question, mother argues that the district court exceeded its authority when, in March 2013, it ordered her to pay father $1,236 for the 2010 income-tax dependent exemption for the older child. In October 2012, when father filed the motion culminating in the March 2013 order, the district court had already awarded father the value of the exemption, subject to him being current on his child-support obligation. Because the March 2013 order did not alter the parties' rights, it was permissible under *Redmond v. Redmond*, 594 N.W.2d 272, 275 (Minn. App. 1999), as an order clarifying, interpreting, or enforcing the prior award.

Mother argues that the district court made "no findings" to support some of its conclusions and that the findings it made are contrary to the record. The original judgment awarded father the dependent exemption, if he was current on his support obligation, and a November 2011 order amended the judgment to state that, to claim the exemption, father had to be current in his basic-child-support obligation but not medical or child-care support.[3] A July 2012 order notes that father made a prima facie case that

[2] Mother cites an unpublished opinion of this court that she asserts requires removal of the district court judge. Even ignoring that opinion's nonbinding nature, we disagree with mother's reading of the case. Further, it is factually distinguishable from this case.

[3] The district court, consistent with the parents' acrimonious relationship, may have been concerned that conditioning father's ability to claim the dependent exemption on his being current in medical support would allow mother, the children's custodian, to artificially manipulate that condition, thereby precluding father from claiming the

he was entitled to the 2010 exemption, and gave mother 30 days to submit documentation showing otherwise. Mother submitted nothing, which explains why the district court allowed father to claim the exemption. The associated findings are sufficient to permit appellate review and are supported by the evidence, and the district court did not otherwise misapply the law. *See Lenz v. Lenz*, 430 N.W.2d 168, 169 (Minn. 1988) (noting that an abuse of discretion includes misapplying the law or making a decision based on unsupported findings); *Vinnes v. Vinnes*, 384 N.W.2d 589, 592 (Minn. App. 1986) (stating that findings are sufficient if they "allow appellate review"). Thus, we will not alter the court's treatment of the dependent exemption.

We also reject mother's assertion that the district court erred by acting sua sponte in addressing the dependent-exemption issue in its November 2011 and subsequent orders.[4] Mother admits that *she* raised the issue to the district court and that a January 2012 hearing addressed the question, but states that the order of July 2012 "was silent as to the tax exemption modification." That order, however, considers the exemption issue in detail and concludes that father made a prima facie showing of entitlement to the 2010 exemption. The conditional phraseology of the findings in that order was required because the order gave mother 30 days to submit evidence showing that father should not be allowed to take the exemption. After mother did not respond to the court's invitation,

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exemption. *Cf. Rogers v. Rogers*, 622 N.W.2d 813, 823 (Minn. 2001) (using best-interests analysis to review award of dependent exemptions).

[4] Mother's current appeal of the November 2011 order is not untimely. An order may be appealed within 60 days after service by a party of written notice of its filing. Minn. R. Civ. App. P. 104.01, subd. 1. Because the record does not show that a party served written notice of filing of the November 2011 order, the time to appeal that order has not expired. *Curtis v. Curtis*, 442 N.W.2d 173, 176 (Minn. App. 1989).

the district court filed its March 2013 order granting father the exemption because mother failed to "provide[] sufficient documentation" to refute the award. This sequence of events, particularly mother's failure to submit the evidence sought by the court, refutes mother's argument that the court's actions were sua sponte and that mother was deprived of due process of law. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) (noting that a party cannot complain about a district court's ruling if one reason for the ruling is that party's failure to submit relevant evidence), *review denied* (Minn. Nov. 25, 2003).[5]

III.

Mother argues that the district court should have enforced the judgment provisions for payment of marital debt, attorney fees, and the fees awarded for challenging determinations of the parenting consultant. A district court may implement, enforce, or clarify a judgment if doing so will not alter the parties' rights, *Redmond*, 594 N.W.2d at 275, and its decision to do so will not be altered absent an abuse of its discretion, *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 2011).

Mother contends that the district court should not have denied her post-dissolution request to have father pay one-half of certain marital debt, totaling "$10,000-$15,000[.]"

[5] While a custodial parent usually receives income-tax dependent exemptions for children, *Rogers*, 622 N.W.2d at 823, a district court, after considering the parties' circumstances, may allocate the exemptions otherwise, *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). Here, after addressing the parents' circumstances, the original judgment awards one of the dependent exemptions to father. *See Biscoe v. Biscoe*, 443 N.W.2d 221, 224-25 (Minn. App. 1989) (affirming an award of a dependent exemption to a noncustodial parent where the award was contingent on the noncustodial parent's payment of child support). The district court's ongoing oversight of this issue was not an abuse of discretion.

The basis for the July 2012 order denying her request was the district court's recognition of a $65,000 error in the original judgment's property settlement. While mother does not question the existence of the error in the original judgment, she challenges the district court's authority to modify in the July 2012 order the property division that she asserts was finalized in the November 2011 order.

A district court may relieve a party from a mistake in a judgment if relief is sought "within a reasonable time," and not more than a year after judgment is entered. Minn. Stat. § 518.145, subd. 2 (2012). Father moved to correct the $65,000 mistake in the judgment less than a year after its entry. Given the size of the error, we see no abuse of discretion in the district court's reopening the judgment to correct the error. *See Kornberg v. Kornberg*, 542 N.W.2d 379, 386 (Minn. 1996) (noting discretionary nature of district court's decision to reopen a judgment).[6]

Mother alleges that the district court erred by filing the November 2011 order containing its first attempt to correct the $65,000 error while mother's first appeal in this case was pending. Because the July 2012 order refining the November 2011 order was filed after the first appeal was resolved, however, we ignore any such error as harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).[7]

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[6] Because the district court's correction of the mistake is affirmable under Minn. Stat. § 518.145, subd. 2, we decline to address the district court's decision to address the mistake as a "clerical mistake" under Minn. R. Civ. P. 60.01.

[7] We doubt that the district court erred by filing its order while the first appeal was pending. *See* Minn. R. Civ. App. P. 108.01, subd. 2 (addressing matters over which a district court retains authority while an appeal is pending); *Perry v. Perry*, 749 N.W.2d 399, 401 (Minn. App. 2008) (holding that, under rule 108, a district court retained authority to modify a child-support order while that order was being reviewed on appeal).

Using breach-of-contract theories, mother argues that the district court "lacked jurisdiction" to eliminate stipulated conclusions of law 5 and 27 from the judgment. Because the parties' stipulations became part of the judgment when the judgment was entered, mother's attack should be based on the provisions of the judgment, rather than breach-of-contract claims. *See Shirk v. Shirk*, 561 N.W.2d 519, 522 (Minn. 1997). Moreover, mother does not identify a provision of conclusion of law 5 that the district court failed to uphold; she simply asserts that father "owes [mother's] fees and costs" because he appealed "all of the parenting consultant decisions," and the district court rejected those appeals in its July 2012 order. These assertions are violently at odds with the record. Similarly, mother's assertion that the district court failed to enforce conclusion 27's requirement that each party be responsible for their own attorney fees is based on the $65,000 error that was the subject of multiple orders and hearings by the district court, culminating with the ruling regarding that mistake that we affirmed above.

Citing a stipulation, mother seeks payment from father for the children's activity fees. But the judgment controls the issue. Further, the district court previously offset the fees against amounts mother owed father, and the district court found mother's request for the fees to be late. The district court did not abuse its discretion.

IV.

Alleging that Merrill Lynch lacked "standing" to seek relief from the court because it was not a "real party in interest" in the dissolution, mother argues that the district court erred by relieving Merrill Lynch of the July 2012 order directing it to liquidate mother's share of a CMA account and deposit the proceeds with the court after

paying from those proceeds various amounts. Standing requires a person to be aggrieved before a court will exercise its jurisdiction to hear the person's request for relief. *Citizens for a Balanced City v. Plymouth Congreg. Church*, 672 N.W.2d 13, 18 (Minn. App. 2003). The district court ordered Merrill Lynch to liquidate the parents' CMA account and disburse the proceeds. Merrill Lynch also had to respond to the subpoena of mother's (former) attorney requiring production of documents regarding the CMA account. Merrill Lynch objected to neither obligation, each of which aggrieved it to some extent. Thus, we conclude that Merrill Lynch had standing to seek the relief it requested.

Mother asserts that Merrill Lynch lacked standing to seek the court-appearance fees for its employee who mother subpoenaed to appear at trial. Merrill Lynch submitted affidavits showing that mother refused to pay for the employee's appearance, even though mother had agreed to do so, and the payment was required under Minn. R. Civ. P. 45.03(d). Further, while the district court apparently heard testimony on this issue at a December 2012 hearing, the record contains only a partial transcript of that hearing. As mother has offered insufficient facts to support her argument on the point, we decline to address it, except to note case law suggesting that Merrill Lynch had standing to assert the employee's claim for compensation for appearing at trial. *See State v. Knutson*, 523 N.W.2d 909, 911 (Minn. App. 1994) (holding, in the context of a media employer, that the employer had a sufficient interest in a subpoena of one of its reporters to give that employer standing in the case), *review denied* (Minn. Jan. 13, 1995).

As noted by Merrill Lynch, other claims made by mother arising out of Merrill Lynch's conduct were either not made to the district court or are not supported by legal

authority, and we decline to address them. *See Theile v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (permitting waiver of issues raised on appeal that were not raised to the district court); *Louden v. Louden*, 221 Minn. 338, 339, 22 N.W.2d 164, 166 (1946) (deeming issue waived if error is "based on mere assertion and not supported by any argument or authorities").

V.

Asserting that father "unreasonably contributed to the length and expense of this proceeding" and that Merrill Lynch both brought motions on behalf of its non-party employee and a defective motion to liquidate mother's investment account, mother asserts that the district court abused its discretion by not awarding her attorney fees from father and from Merrill Lynch. Whether to award conduct-based attorney fees is discretionary with the district court, Minn. Stat. § 518.14, subd. 1 (2012), and its decision will not be altered absent an abuse of that discretion, *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

The district court could have awarded attorney fees against either mother or father for their repetitive motions, and repeated violations of court rules. On this record, both parents are responsible for the length and expense of these proceedings, and the district court did not abuse its discretion by not awarding mother fees from father. Similarly, the motions brought by Merrill Lynch were reasonable under the circumstances, and we affirm the district court's denial of attorney fees to mother for Merrill Lynch's conduct.

Affirmed.