ATTACHMENT 2

COLORADO COURT OF APPEALS DATE FILED: February 24, 2022

Court of Appeals No. 21CA0503
Larimer County District Court No. 18DR30326
Honorable Laurie K. Dean, Judge

In re the Marriage of

Derek Skellchock,

Appellant,

and

Alora-Ann Volz,

Appellee.

JUDGMENT AFFIRMED

Division A
Opinion by JUDGE CASEBOLT*
Román, C.J., and Graham*, J., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced February 24, 2022

Derek Skellchock, Pro Se

No Appearance for Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 Derek Skellchock (father) appeals the district court's judgment that entered permanent orders in connection with the dissolution of his marriage with Alora-Ann Volz (mother). We affirm.

I. Background

¶ 2 The parties were married for approximately five months and had one child together when father initiated the dissolution proceeding in August 2018.

¶ 3 The district court entered temporary orders, which gave mother primary care of the child and ordered father to pay child support in the amount of $182 per month.

¶ 4 The parties later exercised relatively equal parenting time with the child, and the court modified the temporary parenting schedule to provide 50/50 parenting time. The court reserved ruling on whether to modify temporary child support.

¶ 5 After a two-day permanent orders hearing in 2020, at which both parties were represented by counsel, the court adopted the parties' pre-hearing stipulations asserted in their amended joint trial management certificate (JTMC) and entered permanent orders resolving their remaining disputes.

¶ 6 Concerning property division, the court acknowledged that the parties had largely stipulated to the marital property distribution. For the two disputed issues, the court ordered the parties to split an outstanding utility bill and resolved their disagreement over personal property. The court declined to allocate additional debts, including the amount of a purported loss from the short sale of the parties' marital home, because the parties' amended JTMC did not identify a dispute over these additional debts and father had not provided discovery to mother for the short sale.

¶ 7 As for the allocation of parental responsibilities, the court adopted the parties' stipulation to continue the 50/50 parenting time schedule, declined father's request to temporarily alter the holiday parenting plan schedule to give him make-up parenting time, and allowed the parent not exercising parenting time to have telephone and video contact with the child at specific times. The court also found that father had perpetrated acts of domestic violence against mother and determined that joint decision-making responsibility was not appropriate. It allocated to mother decision-making responsibility for educational and medical

decisions, and it allocated to father decision-making responsibility over extracurricular activities.

¶ 8 The court then ordered father to pay mother child support in the amount of $111 per month. In calculating this amount, the court used father's veteran's disability benefits for his income (as he had stipulated in the amended JTMC) and found that mother's workers' compensation benefits, which she was receiving after suffering a serious workplace injury during the proceeding, represented her total gross income.

¶ 9 Mother and father filed motions for post-trial relief, seeking clarification, amendment, and reconsideration of the permanent orders. The court amended its judgment in part but otherwise declined to reconsider the permanent orders. As relevant, the court retroactively reduced father's temporary child support obligation to $111 per month given the prior modification to temporary parenting time. The court also amended its orders to remove video contact with the child by the parent not exercising parenting time, limiting this communication to telephone calls to decrease the conflict that was occurring between the parties.

II. Preliminary Matters

¶ 10 Before we turn to the merits of father's contentions, we note a few preliminary matters that frame our review of his appeal.

¶ 11 Father represents himself, and his opening brief does not meet the basic requirements of C.A.R. 28. These requirements are not mere technicalities; they facilitate our appellate review. *See In re Marriage of Parr*, 240 P.3d 509, 513 (Colo. App. 2010). The precise arguments father raises in his brief, therefore, are, at times, difficult to discern. We liberally construe his pro se arguments and address his contentions as best we can understand them. *See In re Estate of Cloos*, 2018 COA 161, ¶ 7; *Cikraji v. Snowberger*, 2015 COA 66, ¶ 10. But we will not develop father's arguments for him or search the record for supporting facts not cited in his brief. *Cikraji*, ¶ 10. Nor will we consider any material not included in the appellate record. *See In re Marriage of McSoud*, 131 P.3d 1208, 1223 (Colo. App. 2006).

¶ 12 Father also did not provide us with a transcript of the two-day permanent orders hearing or any other evidentiary hearing. *See* C.A.R. 10(d)(3) (It is the appellant's responsibility to "include in the record transcripts of all proceedings necessary for considering and

deciding the issues on appeal."); *see also In re Marriage of Tagen*, 62 P.3d 1092, 1096 (Colo. App. 2002). In the absence of these transcripts, we must presume that they support the court's findings and conclusions. *See In re Marriage of Beatty*, 2012 COA 71, ¶ 15; *McSoud*, 131 P.3d at 1223.

III. Property Division

¶ 13 Father contends that the district court improperly disregarded his credit card debt and the loss from the marital home's short sale when it divided the marital property because he had disclosed these debts to mother on his sworn financial statement. Based on the record, we discern no error.

¶ 14 The district court has broad discretion over the equitable division of marital property. *In re Marriage of Balanson*, 25 P.3d 28, 35 (Colo. 2001). We will not disturb the court's determinations "unless there has been a clear abuse of discretion," meaning that its decision is manifestly arbitrary, unreasonable, or unfair, or a misapplication of the law. *Id.*; *see In re Marriage of Young*, 2021 COA 96, ¶ 7.

¶ 15 Although father listed his credit card debt and identified the marital home's short sale on his sworn financial statement, that

alone does not necessarily satisfy father's disclosure requirements. C.R.C.P. 16.2 imposes a heightened duty to disclose in a dissolution proceeding, and it demands that the parties affirmatively disclose all information that is material to the resolution of the case, including financial statements and records of personal debts. *See* C.R.C.P. 16.2(e)(1); C.R.C.P. 16.2(e)(2) & app. form 35.1; *see In re Marriage of Hunt*, 2015 COA 58, ¶ 13. The parties have a continuing duty to supplement this financial information during the proceeding. *See* C.R.C.P. 16.2(e)(4). "If a party fails to comply with any of the provisions of this rule, the court may impose appropriate sanctions . . . ." C.R.C.P. 16.2(j).

¶ 16 Beyond listing the multiple credit card accounts and balances on his sworn financial statement, the record does not show that father substantiated these debts with any financial documents after October 2018 — over two years before the permanent orders hearing. Even then, the October 2018 disclosures included only a few of the credit card accounts reported on father's 2020 sworn financial statement. And there is no indication that he introduced evidence at the hearing to substantiate these debts. *Cf. In re Marriage of Rodrick*, 176 P.3d 806, 815 (Colo. App. 2007) ("It is the

parties' duty to present the trial court with the data needed to allow it to value the marital property, and any failure by the parties in that regard does not provide them with grounds for review.").

¶ 17 Nor did the parties identify or dispute husband's credit card debts in their amended JTMC or any of mother's personal debts. Rather, they stipulated that each party would retain accounts already in their separate names as their sole and separate property. Father reported that the credit card accounts were solely in his name.

¶ 18 As for the short sale, the amended JTMC did not identify this as a disputed debt and father's sworn financial statement reported only an estimated loss. The record does not show that father disclosed documents to mother before the hearing or introduced evidence that established the amount of any loss. The only exhibits in the record concerning the short sale, while not admitted at the hearing, revealed that neither party had an outstanding debt following the sale.

¶ 19 Given this record support and the presumption that the testimony from permanent orders would support the court's ruling, we are not persuaded that the court erred by not entering

additional orders concerning father's credit card debt and the marital home short sale. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 20 Father also asserts that the parties "received 1099c [c]ancellation of debt in the amount of $21,635," for which the parties must pay taxes. Father does not indicate that he raised this issue with the district court; nor does the record indicate that he did so. We will not address this issue for the first time on appeal. *See In re Marriage of Ensminger*, 209 P.3d 1163, 1167 (Colo. App. 2008) ("Arguments not presented at trial cannot be raised for the first time on appeal.").

IV. Allocation of Parental Responsibilities

¶ 21 Father also raises multiple challenges to the district court's allocation of parenting time and decision-making responsibility. We discern no error.

A. Legal Standards

¶ 22 The district court has broad discretion over parenting matters, and we exercise every presumption in favor of upholding its decision. *See In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007). We will not overturn the court's parenting decisions

absent a showing that the court abused its discretion. *Id.* The district court allocates parental responsibilities in accordance with the child's best interests. *In re Custody of C.J.S.*, 37 P.3d 479, 482 (Colo. App. 2001); *see* § 14-10-124(1.5), C.R.S. 2021.

B. Parenting Time

¶ 23 Father asserts that mother associates with known gang members and that having the child in that environment as well as being around mother's other alleged behaviors (which included "drinking, smoking, and drug usage") was not in the child's best interests. But father stipulated to the parenting time schedule that provided mother with equal parenting time, discrediting his allegations that parenting time with mother was not in the child's best interests. The court also found that "[t]here was no evidence presented" that mother's relationships with her friends had impacted her parenting with the child. Although father disputes the court's finding, we must presume the missing transcripts support it. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223. To the extent father further challenges the court's allocation of parenting time, we will not consider bald legal propositions presented without

argument or development. *See Barnett v. Elite Props. of Am., Inc.*, 252 P.3d 14, 19 (Colo. App. 2010).

¶ 24 Father also attempts to challenge the court's temporary orders that allowed mother's family to assist with parenting time exchanges, but such temporary orders are not subject to our review. *See In re Marriage of Adams*, 778 P.2d 294, 295 (Colo. App. 1989) (providing that a temporary parenting time order "is not an order that may be appealed to this court").

C. Video Contact

¶ 25 Father next appears to dispute the district court's amended permanent orders ruling that removed video contact with the child by the parent not exercising parenting time. The parties sought post-trial clarification on video contact due to disagreements that had arisen after permanent orders, and the court amended its order to decrease the parties' conflict. Lessening the parents' conflict promotes the child's best interests. *See* § 14-10-124(1.5)(a)(III), (VI). Beyond father's general disagreement with the ruling, he develops no legal argument explaining how the court erred. We therefore will not disturb the court's ruling. *See Westrac, Inc. v. Walker Field*, 812

P.2d 714, 718 (Colo. App. 1991) (When the party "fail[s] to specify why the trial court erred, we will not review the ruling.").

D. Domestic Violence Finding

¶ 26 Father also contends the court erred by finding that he had perpetrated acts of domestic violence against mother when determining the allocation of decision-making responsibility. *See* § 14-10-124(4)(a)(II)(A) (limiting the district court's ability to allocate joint decision-making responsibility when one party has committed domestic violence). We disagree.

¶ 27 The district court found that (1) mother had credibly testified to an incident where father pointed a handgun at her in 2017; (2) mother had obtained a permanent protection order against father during the dissolution proceeding based on his acts of domestic violence; and (3) father continued to verbally abuse mother, including consistently accusing her of lying. Given these findings, the court found by a preponderance of the evidence that father had committed acts of domestic violence. *See* § 14-10-124(1.3) (defining domestic violence as an act of violence or a threatened act of violence, including acts or threats "used as a method of coercion, control, punishment, intimidation, or revenge").

¶ 28 Father disputes the evidence in support of the court's determination and the credibility of mother's testimony. But it was for the district court to resolve the conflicts in the evidence, determine the credibility of witnesses, weigh the testimony, and draw inferences from the evidence. *See In re Parental Responsibilities Concerning D.T.*, 2012 COA 142, ¶ 17. We must presume the testimony from the permanent orders hearing supports the court's findings. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 29 Father further argues that the lack of a criminal conviction against him undermines the court's domestic violence finding. However, there is no requirement that a criminal conviction be entered before a court may find a party has committed domestic violence when determining an allocation of decision-making responsibility. *See* § 14-10-124(4)(a)(II); *In re Marriage of McCaulley-Elfert*, 70 P.3d 590, 592-94 (Colo. App. 2003). Unlike a criminal conviction (which requires proof beyond a reasonable doubt), the court needs to find only by a preponderance of the evidence that a party committed domestic violence — that it was

more likely true than not. *See* § 14-10-124(4)(a)(II); *McCaulley-Elfert*, 70 P.3d at 593.

¶ 30 We therefore will not disturb the court's finding that father perpetrated acts of domestic violence.

E. Allocation of Decision-Making Responsibility

¶ 31 We reject father's challenge to the court's allocation of medical and educational decision-making responsibility to mother.

¶ 32 The district court determined that, because of father's domestic violence, it could not order joint decision-making (which he had requested). It then considered the conflicting evidence concerning each parent's ability to act in the child's best interests for major decisions and allocated decision-making responsibility accordingly.

¶ 33 In challenging the court's determination, father points to the evidence he believes supported an allocation of decision-making responsibility to him instead of mother. However, without the permanent orders transcript, we are bound by the court's resolution of the conflicting evidence. *See D.T.*, ¶ 17; *see also Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 34 To the extent father suggests that he should have control over preschool enrollment because that "is typical" of an extracurricular activity and not an educational decision, father did not raise this issue with the district court. *See Ensminger*, 209 P.3d at 1167. Nor does he provide any legal support for this assertion. *See Biel v. Alcott*, 876 P.2d 60, 64 (Colo. App. 1993) ("An appealing party bears the burden to provide supporting authority for contentions of error asserted on appeal, and a failure to do so will result in an affirmation of the judgment."). We thus decline to address it.

¶ 35 In sum, we discern no error by the court in its allocation of parental responsibilities.

V. Modifying Temporary Child Support

¶ 36 Father contends that, following the entry of temporary child support, the child resided with him the majority of the time and that the court failed to determine the retroactive modification to temporary child support based on the actual number of overnights the child spent with him. We discern no error.

¶ 37 The court may modify child support "when a court-ordered, voluntary, or mutually agreed upon change of physical care occurs," § 14-10-122(5), C.R.S. 2021, or "upon a showing of changed

circumstances that are substantial and continuing," § 14-10-122(1)(a). We review child support orders for an abuse of discretion. *In re Marriage of Davis*, 252 P.3d 530, 533 (Colo. App. 2011).

¶ 38 The district court found that, after the entry of temporary child support, the parties had cohabitated for approximately three months. The court also found that, after this cohabitation, they agreed to a nearly equal parenting time schedule, and the temporary parenting plan was modified to a 50/50 parenting schedule. The court then reduced father's temporary child support obligation retroactively to account for these changes in parenting time.

¶ 39 The court rejected father's request to further reduce his obligation based on allegedly exercising more than 50/50 parenting time after the parties cohabitated. The court found that it was "nearly impossible to tell from the record" that an increase in father's parenting time was "an agreed upon change in physical care" because evidence from the hearing showed that some of the parenting time deviations were the "result of [father] refusing to allow" mother to have her equal parenting time.

¶ 40 Thus, any change in the child's physical care for more than the 50/50 schedule was not a result of a court-ordered, voluntary, or mutually agreed upon change. *See* § 14-10-122(5). And father made no showing that this change was substantial and continuing. *See* § 14-10-122(1)(a). We must presume the testimony at the hearing supports the court's factual finding and therefore cannot conclude that the court erred by not further modifying temporary child support. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

VI. Income Determinations for Child Support

¶ 41 Father also contends that the court's findings concerning his and mother's incomes for purposes of determining child support were improper. We disagree.

¶ 42 First, he argues that the court erred by using his veteran's disability benefits as his income when determining child support, arguing that federal law preempts the district court's ability to use this compensation. However, father stipulated to the court's use of his veteran's disability benefits as his income. A stipulation is binding on the party who makes it. *Maloney v. Brassfield*, 251 P.3d 1097, 1108 (Colo. App. 2010). Father therefore waived this argument, and he may not assert a position that is contrary to the

one he took at the permanent orders hearing. *See In re Marriage of Hill*, 166 P.3d 269, 273 (Colo. App. 2007) ("Waiver is the intentional relinquishment of a known right."); *see also Roberts v. Am. Fam. Mut. Ins. Co.*, 144 P.3d 546, 549-50 (Colo. 2006) ("[A] party may . . . be estopped from asserting on appeal a position contrary to one he took at trial or in which he later acquiesced . . . ."); *Horton v. Suthers*, 43 P.3d 611, 618 (Colo. 2002) (invited error bars a party from taking a position on appeal that is inconsistent with that party's actions in the trial court). Father must abide by the consequences of his actions at the hearing. *See Horton*, 43 P.3d at 618; *Roberts*, 144 P.3d at 549-50. To the extent father suggests that his attorney acted contrary to his direction, we will not address this allegation that is asserted for the first time on appeal. *See Ensminger*, 209 P.3d at 1167.

¶ 43 In any event, a "veteran's disability benefits are income to be included as gross income" for purposes of determining child support. *In re Parental Responsibilities Concerning M.E.R-L.*, 2020 COA 173, ¶ 31. In reaching this conclusion, the court in *M.E.R-L.* rejected arguments like the arguments father now asserts. *See id.* at ¶¶ 20-21, 23-30.

¶ 44 Second, father disputes the court's factual findings concerning mother's income. He argues that the court erred by not including income she was receiving in addition to her workers' compensation benefits and by not imputing additional income due to her voluntary underemployment. He also argues that mother failed to disclose her full financial information and misrepresented her earnings at the hearing. The district court rejected these arguments, finding that father did not establish that mother was hiding her income; that the income she had earned in addition to her workers' compensation benefits was limited, inconsistent, and not a regular source of income; and that because of her severe workplace injury, mother was not voluntarily underemployed. Given that father failed to provide the transcripts of the hearing, we presume the testimony supports these factual findings. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 45 We therefore discern no error in the court's income findings.

VII. Judicial Bias

¶ 46 Father suggests that the court's permanent orders were the result of the judge's bias and personal opinions. True, a trial judge must not exhibit bias directed toward any party. *See Hatton*, 160

P.3d at 330. But father's conclusory claims based solely on his disagreement with the court's rulings do not establish judicial bias. *See id.*; *see also McSoud*, 131 P.3d at 1223.

VIII. Father's Motion for Post-Trial Relief

¶ 47 Father also generally contests the court's denial of his post-trial motion for reconsideration. He argues irregularities in the proceedings, accident or surprise, newly discovered evidence, and errors in law. C.R.C.P. 59(d)(1), (3), (4), (6). While he frames his contentions under C.R.C.P. 59, he merely reasserts the errors addressed and rejected above. In particular, father (1) notes mother's undisclosed income and ability to work; (2) challenges the credibility of evidence in support of the court's rulings; (3) disagrees with the amended JTMC's stipulations; and (4) disputes the court's failure to divide marital debts and its determination of child support. His disagreements with the court's rulings do not entitle him to relief under C.R.C.P. 59. *See People in Interest of K.L-P.*, 148 P.3d 402, 403 (Colo. App. 2006) (The primary purpose of C.R.C.P 59 "is to give the court an opportunity to correct any errors that it may have made."). We thus are not persuaded that the district court abused its discretion by declining father's request to reconsider

these portions of the permanent orders. *See Credit Serv. Co. v. Skivington*, 2020 COA 60M, ¶ 24 (reviewing a district court's C.R.C.P. 59 ruling for an abuse of discretion).

IX. Conclusion

¶ 48 The judgment is affirmed.

CHIEF JUDGE ROMÁN and JUDGE GRAHAM concur.

Court of Appeals

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PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

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