SUMMARY
December 7, 2023

2023COA116

Nos. 22CA0313 & 22CA0727, *In re Marriage of Goldstone* — Family Law — Dissolution — Permanent Orders — Statutory Interest — Prejudgment Interest

In this domestic relations case, father appeals from the district court's permanent orders that allocated parenting time, divided the marital property, ordered him to pay maintenance and child support, and directed him to pay a portion of mother's attorney fees and costs. He also challenges the court's order that entered a money judgment related to funds allocated to mother in the court's property division, along with the accrual of interest on those funds. As a matter of first impression, a division of the court of appeals considers whether the district court had the authority to enforce its property division order by awarding prejudgment interest on property it found was wrongfully withheld, under section 5-12-

102(1), C.R.S. 2023, before a final judgment entered. The division concludes that the court was so authorized. Nevertheless, it reverses that order because the court erred in determining the date on which interest began to accrue. The judgment is otherwise affirmed.

COLORADO COURT OF APPEALS **2023COA116**

Court of Appeals Nos. 22CA0313 & 22CA0727
Boulder County District Court No. 21DR30037
Honorable Andrew Hartman, Judge

In re the Marriage of

Nicole Collins,

Appellee,

and

Scott Goldstone,

Appellant.

JUDGMENT AFFIRMED IN PART AND REVERSED IN PART,
AND CASE REMANDED WITH DIRECTIONS

Division V
Opinion by JUDGE FREYRE
Kuhn and Taubman*, JJ., concur

Announced December 7, 2023

Scardina Law, LLC, Autumn C. Scardina, Todd R. Scardina, Denver, Colorado, for Appellee

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2023.

¶ 1 The district court dissolved the marriage of Scott Goldstone (father) and Nicole Collins (mother), and it entered permanent orders that allocated parenting time, divided the marital property, ordered father to pay maintenance and child support, and directed father to pay a portion of mother's attorney fees and costs. The district court also ordered the entry of a money judgment related to funds allocated to mother in the court's property division, along with the accrual of interest on those funds. As a matter of first impression, we consider whether the court had the authority to enforce its property division order by awarding prejudgment interest on property it found was wrongfully withheld, under section 5-12-102(1), C.R.S. 2023, before a final judgment entered. We conclude that the court was so authorized. Nevertheless, we conclude that the court erred in determining the date on which interest began to accrue. We affirm the judgment in part and reverse it in part, and we remand the case for further proceedings.

I. Allocation of Parenting Time

¶ 2 Father contends that the district court erred by allocating parenting time because the court's oral ruling was inconsistent with its written order. We discern no error.

A. Relevant Facts

¶ 3 The parties have three children together, the youngest of whom, Q.N., was diagnosed with bilateral cystic periventricular leukomalacia, spastic quadriplegic cerebral palsy, and epilepsy. Q.N.'s medical conditions require that he receive full-time, specialized care. Mother, a registered nurse, provided home healthcare services for Q.N.

¶ 4 During the dissolution proceeding, the parties stipulated to a temporary 2-2-3 parenting time plan for the children,[1] and they agreed that mother would provide Q.N.'s daily care on the weekdays, even when the other two children were with father.

¶ 5 At the October 2021 permanent orders hearing, the district court made preliminary findings concerning parenting time. The court acknowledged that Q.N. demanded a lot of attention and that it would be in the children's best interests "to maintain the temporary orders plan . . . or with mother having [Q.N.] from Monday through Friday." The court then said that the 2-2-3

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[1] "2-2-3" refers to a schedule wherein the children stay with the first parent for two days of the week, the second parent for two days, and then the first parent for three days.

parenting time plan benefited the two older children and that it would "benefit [them] to have a little bit of time away from [Q.N.]."

¶ 6 In the court's November 16, 2021, written ruling, the court allocated to mother primary parenting time for Q.N., allowing father to exercise overnight visits with Q.N. every other weekend, as well as additional non-overnight visits. The court also directed the parties to continue to exercise a 2-2-3 equal parenting time schedule for the other two children.

B. Legal Principles

¶ 7 When allocating parenting time, the court considers all relevant factors, including those factors identified in section 14-10-124(1.5)(a), C.R.S. 2023, and giving paramount consideration to the children's safety, and their physical, mental, and emotional conditions and needs. *See In re Parental Responsibilities Concerning M.W.*, 2012 COA 162, ¶ 16.

¶ 8 The district court has broad discretion over the allocation of parenting time, and we exercise every presumption in favor of upholding its decision. *In re Marriage of Badawiyeh*, 2023 COA 4, ¶ 9. We will not disturb the court's parenting time decision absent a showing that the court acted in a manifestly arbitrary,

unreasonable, or unfair manner, or that it misapplied the law. *Id.* We will uphold the court's decision when the evidence supports it. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007).

C. Discussion

¶ 9 Father argues that the district court abused its discretion by allocating mother primary parenting time with Q.N., arguing that the court's oral ruling granted him equal parenting time and the written ruling gave no explanation for changing that decision. We disagree.

¶ 10 We acknowledge the ambiguity in the court's oral ruling, but we are not persuaded that the court's comments were inconsistent with its allocation of parenting time. The court's oral remarks, like its written ruling, indicated that mother would care for Q.N. during the week, the other two children would spend time away from Q.N., and those two children would continue the 2-2-3 parenting plan.

¶ 11 But even if we were to assume that the court's written order modified the court's oral remarks concerning Q.N.'s parenting time, a district court may modify any oral opinion before it issues a final written ruling. *See In re Marriage of McSoud*, 131 P.3d 1208, 1221 (Colo. App. 2006).

¶ 12 And contrary to father's assertion, the district court's written ruling made sufficient findings to explain its parenting time allocation and its determination that allowing mother to exercise primary parenting time with Q.N. was in the children's best interests. The court explained that Q.N.'s medical needs and the impact of those needs on the parties' time and attention were "exceptional." *See* § 14-10-124(1.5)(a)(V). It acknowledged father's parental role but found that mother was better suited to meet Q.N.'s needs. *See* § 14-10-124(1.5)(a)(III). In addition, it explained that mother had been Q.N.'s full-time caregiver, and it found that her experience as a nurse and her passion to assist Q.N. made her uniquely qualified to meet his significant needs. *See* § 14-10-124(1.5)(a)(III), (V), (VII). The court also found that, during the marriage, mother was the primary caregiver for all three children and that father's work schedule had limited his time with them. *See* § 14-10-124(1.5)(a)(III), (VII).

¶ 13 Father disagrees with the court's parenting time allocation, but the court's findings are supported by the record. *See Hatton*, 160 P.3d at 330; *see also In re Parental Responsibilities Concerning S.Z.S.*, 2022 COA 105, ¶ 28 (recognizing that we may not reweigh

the court's resolution of conflicting evidence). In particular, mother testified that she had been caring for Q.N. daily and had become his home healthcare provider. She stated that Q.N. was "fully dependent" on his caregiver for "absolutely everything" and that he required twenty-four-hour supervision. She also testified that she had developed "an intuition" for his needs and that no one else could provide Q.N. with the level of care that she provided him. And she explained that the 2-2-3 parenting plan schedule, which required frequent exchanges, was not in Q.N.'s best interests because it left him exhausted and unable to fully participate in the treatments he required.

¶ 14 The district court therefore acted within its discretion and allocated parenting time based on the children's best interests.

II. Property Division

¶ 15 Father contends that the court erred in dividing the marital estate because it (1) did not consider his contributions toward the marital estate and (2) failed to enter orders that addressed the decreased value of an asset after permanent orders. We disagree.

A. Relevant Facts

¶ 16 Before the marriage, mother and father bought a house together (the High Street home). To purchase the home, father contributed approximately $64,000 of his separate funds. The parties sold the High Street home during the marriage and used a portion of the proceeds to purchase another home (the Jackson Court home). About this time, father also received a personal injury settlement, and the parties also used a portion of those funds to purchase the Jackson Court home.

¶ 17 In the court's allocation of the marital estate, it directed the parties to sell the Jackson Court home and equally divide the proceeds. The court found that no evidence supported father's claim that he and mother had agreed that he would recoup the $64,000 he had contributed toward the purchase of the High Street home, finding, instead, that this money became a gift to the marriage.

¶ 18 The district court divided the remainder of the $1.3 million marital estate approximately equally between the parties. In doing so, the court found that father had a retirement account (the TD Ameritrade account) worth $349,232 at the time of the October

2021 hearing and that $320,611 from that account was marital property. The court awarded $158,375 to mother and $162,236 to father, and, given the delay in issuing the written ruling, the court ordered the parties to divide any increase in this account as of November 16, 2021 (the date the court entered its permanent orders ruling and issued the dissolution decree), by allocating father 55% and mother the remaining 45% of any increase in value. The court later determined that, based on the TD Ameritrade account's value on November 16, 2021, mother was entitled to an additional $19,762, resulting in a total allocation of $178,137.

B. Legal Principles

¶ 19 A court has great latitude to equitably divide the marital estate based on the facts and circumstances of each case, and we may not disturb the court's property division unless the court abused its discretion. *In re Marriage of Balanson*, 25 P.3d 28, 35 (Colo. 2001); *see also* § 14-10-113(1), C.R.S. 2023. To achieve an equitable division, the court must consider all relevant factors, including, as pertinent here, each party's contribution to the acquisition of marital property, as well as any change in the value of a party's separate property during the marriage or the depletion of the party's

separate property used for marital purposes. § 14-10-113(1)(a), (d); *In re Marriage of Powell*, 220 P.3d 952, 959 (Colo. App. 2009). The court need not make specific findings as to each factor as long as its findings allow us to determine that the court's decision is supported by competent evidence. *Powell*, 220 P.3d at 959.

C. Contributions to the Marital Estate

¶ 20 Father contends that the district court's property division was an abuse of discretion because the court did not consider his contributions toward the marital estate. We discern no abuse of discretion.

¶ 21 Father highlights that the parties used the funds from his personal injury settlement to buy the Jackson Court home. However, he admits that these funds were marital property. *See In re Marriage of Fjeldheim*, 676 P.2d 1234, 1236 (Colo. App. 1983) (holding that a personal injury settlement is marital property if it arises from an accident that occurred during the marriage). Still, he suggests that the court's ruling "lack[ed] any consideration" of this contribution. However, we presume that the court considered all the evidence presented. *See In re Marriage of Udis*, 780 P.2d 499, 504 (Colo. 1989). Even though the court did not specifically

reference the personal injury settlement, it acknowledged father's financial contributions to the marriage, and it was not required to make specific findings concerning the settlement funds. *See Powell*, 220 P.3d at 959. The court also found, with record support, that mother significantly contributed to the marriage financially and as a homemaker, which, contrary to father's contention, supports the court's relatively equal property division. *See* § 14-10-113(1)(a); *Balanson*, 25 P.3d at 35.

¶ 22 Father further argues that the court did not consider the $64,000 that he contributed toward buying the High Street home, the sale proceeds of which went toward the purchase of the Jackson Court home, and that the court did not address the accompanying decrease to his separate property. *See* § 14-10-113(1)(a), (d). The district court acknowledged, however, that father contributed these separate funds toward the High Street home and found that this money became a gift to the marriage. Father does not challenge that finding. Moreover, the court said in its oral remarks that it would take father's contribution into account when it determined the equitable division of the marital estate. We therefore are not

persuaded that the court overlooked father's contribution from, and depletion of, his separate funds.

¶ 23 While father believes that the district court should have placed greater weight on these contributions, it was within its discretion to weigh the relevant factors, and we may not disturb its allocation when, as here, the record supports it. *See Powell*, 220 P.3d at 959.

D. The TD Ameritrade Account

¶ 24 Father asserts that, after November 16, 2021, the value of the TD Ameritrade account significantly decreased. He argues that the district court erred by not issuing an order that accounted for this change in value after November 16, 2021, and that, as a result of the delay in transferring mother her funds from this account, he received substantially less money.[2]

¶ 25 However, with certain exceptions not applicable here, the district court has no authority to divide any earnings or losses of marital property after the entry of a dissolution decree. *See* § 14-10-113(2)(c); *In re Marriage of Heupel*, 936 P.2d 561, 572 (Colo. 1997). This is so because, after the court dissolves the marriage,

[2] Father does not contest the district court's allocation of the TD Ameritrade account's funds as of November 16, 2021.

the marital assets allocated to each spouse become that spouse's separate property. *See* § 14-10-113(2)(c); *see also In re Marriage of de Koning*, 2016 CO 2, ¶ 29 ("After [the] decree is issued, the parties are no longer married . . . .").

¶ 26 The district court entered the decree dissolving the marriage on November 16, 2021, and determined the allocation of the TD Ameritrade account based on its value on that date. The court had no authority to allocate any subsequent decrease in the account. *See* § 14-10-113(2)(c); *Heupel*, 936 P.2d at 572. Although father does not agree with the court that he should bear the loss sustained, father was the holder of the account, the court allocated mother the funds on the date of the decree, and the court determined, within its discretion, that father bore the risk of the loss. *See Balanson*, 25 P.3d at 35.

¶ 27 The district court therefore did not err by declining to allocate the post-decree losses in the TD Ameritrade account.

III. Mother's Income

¶ 28 We next reject father's contention that the district court erred by not imputing potential income to mother for purposes of determining child support and maintenance.

¶ 29 The district court generally determines child support and maintenance based on the parties' actual gross incomes. § 14-10-114(3)(a)(I)(A), (8)(a)(II), C.R.S. 2023 (maintenance); § 14-10-115(3)(c), (5)(a)(I), C.R.S. 2023 (child support). But when the court determines that a party is voluntarily underemployed, it uses that party's potential income instead. § 14-10-114(8)(c)(IV); § 14-10-115(5)(b)(I); *see People v. Martinez*, 70 P.3d 474, 477 (Colo. 2003) (child support); *In re Marriage of Young*, 2021 COA 96, ¶ 22 (maintenance). A party is voluntarily underemployed when that party shirks support obligations by unreasonably forgoing employment. *Martinez*, 70 P.3d at 479.

¶ 30 The district court has broad discretion in determining income, and whether to impute income to a party is typically a question of fact that depends on the circumstances of the case. *Id.* at 480. We may not disturb the court's finding when it is supported by the record. *Id.*

¶ 31 At the hearing, mother testified that, while she had previously worked full time as a registered nurse, she had altered her employment after Q.N.'s birth. She explained that, while she continued to work a couple of shifts per month as a registered

nurse, she primarily cared for Q.N., who required twenty-four-hour care, and that she had been earning additional income as his home healthcare provider. She reported earning $1,519 per month as a home care provider and $1,002 per month as a registered nurse (a total of $2,521 per month).

¶ 32 The district court determined that mother was not voluntarily underemployed, and it found that her monthly income for purposes of maintenance and child support was $2,521. The court explained that mother was uniquely suited to provide Q.N.'s care and her willingness to assume this role was a selfless contribution to the family. The court further explained that, even if mother potentially could earn more money as a registered nurse, the expense of hiring other care providers for Q.N. would substantially offset any additional earnings.

¶ 33 In other words, mother's ability to care for Q.N., given her training, experience, and history, meant that acting as his caregiver was a good faith career choice, and she was not shirking her support obligations. *See In re Marriage of Aragon*, 2019 COA 76, ¶¶ 42-43 (upholding the court's decision not to impute potential income to the mother when she was caring for a child diagnosed

with autism and attention deficit hyperactivity disorder); *In re Marriage of Foss*, 30 P.3d 850, 851-52 (Colo. App. 2001) (reversing the court's imputation of full-time income to a parent who was caring for a child diagnosed with cerebral palsy). While father argues that mother was not the only person caring for Q.N., mother's testimony concerning Q.N.'s needs and her unique ability to meet those needs supports the court's determination. We therefore may not disturb the court's income finding. *See Martinez*, 70 P.3d at 480; *see also S.Z.S.*, ¶ 28.

IV. Dependency Tax Exemption

¶ 34 Father contends that the district court erred by ordering the parties to alternate each year claiming the children as dependents for income tax purposes because an equal allocation of the exemption was not in proportion to each party's contributions to raising the children. We are unpersuaded.

¶ 35 The district court determined that, for purposes of child support, father's gross income was $17,342 per month and that mother's gross income was $2,521 per month. After adjusting the incomes for father's maintenance obligation ($4,068 per month), the court calculated that father's income accounted for 61.71% of the

parties' combined incomes. *See* § 14-10-115(5)(a)(I)(Y). Following further adjustments for the allocation of parenting time and child care and health insurance costs, the court determined that the parties' adjusted support obligations were nearly equal, and it ordered father to pay $29 per month for child support.

¶ 36 The court equally allocated the right to claim the children for income tax purposes, ordering that mother could claim the children every odd numbered year and that father could claim them every even numbered year.

¶ 37 We review a court's child support orders for an abuse of discretion and review de novo whether the court correctly applied the law. *In re Marriage of Cardona*, 321 P.3d 518, 525 (Colo. App. 2010), *aff'd on other grounds*, 2014 CO 3.

¶ 38 When the district court determines child support, it must allocate the right to claim the parties' dependent children for income tax purposes "between the parties in proportion to their contributions to the costs of raising the children." § 14-10-115(12); *see Cardona*, 321 P.3d at 526.

¶ 39 Father argues that, under this statute, the district court's allocation must be in proportion to "the percentage of income

attributed to each parent for child support purposes," *Cardona*, 321 P.3d at 526, and given the proportion of income attributed to him, the court's allocation is inconsistent with section 14-10-115(12).[3]

¶ 40 However, *In Interest of A.R.W.*, 903 P.2d 10, 14 (Colo. App. 1994), supports the court's conclusion, and we therefore are not persuaded to disturb it. In *A.R.W.*, the district court determined that, given the parties' respective incomes, the father's support obligation constituted 61.9% of the total amount owed. *Id.* The district court allocated to father the right to claim the tax exemption for the child in alternating years. *Id.* On appeal, the division affirmed, holding that even though father's income meant that his support obligation accounted for 61.9% of the total amount, an equal allocation complied with the statutory requirements. *Id.*

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[3] Mother asserts that, under *S.F.E. in Interest of T.I.E.*, 981 P.2d 642, 648 (Colo. App. 1998), the contributions to the costs of raising the children "means the percentage of child support attributed to each parent" under section 14-10-115, C.R.S. 1998, not the income attributed to each party. She argues that, under *S.F.E.*, an equal allocation of the dependency tax exemption is appropriate because the parties' adjusted child support obligations were nearly equal. Because we discern no error in the court's allocation based on the parties' respective incomes, we need not address mother's argument or whether *S.F.E.* conflicts with *In re Marriage of Cardona*, 321 P.3d 518, 526 (Colo. App. 2010), *aff'd on other grounds*, 2014 CO 3.

(addressing former section 14-10-115(14.5), C.R.S. 1994, which was relocated to section 14-10-115(12) in 2007); *see* Ch. 29, sec. 1, § 14-10-115(12), 2007 Colo. Sess. Laws 102.

¶ 41 Here, father's income constituted a little over 61% of the parties' combined incomes for purposes of calculating their child support obligations. The district court acknowledged that it had attributed to father a slightly higher percentage of the parties' combined gross incomes, but it determined that alternating the dependency tax exemption annually was "fair and equitable based on the respective incomes attributed to [the] parties." In light of *A.R.W.*'s holding, we are not persuaded that the court misapplied the law or otherwise abused its discretion. We therefore may not disturb the district court's allocation of the dependency tax exemption.

V. Award of Attorney Fees and Costs

¶ 42 Father next contends that the district court erred by not applying a lodestar analysis when it awarded mother $29,300 for her attorney fees and costs. We disagree.

A. Relevant Facts

¶ 43 At the October 2021 permanent orders hearing, mother requested an award of her attorney fees and costs under section 14-10-119, C.R.S. 2023. Her counsel provided an affidavit, prepared before the hearing, that reported $39,000 in outstanding fees and costs, and indicated that she anticipated charging at least an additional $11,000 to complete the hearing.

¶ 44 In its permanent orders, the district court agreed with mother that the disparity in the parties' financial situations warranted an award of attorney fees and costs. The court ordered father to pay "one-half the balance" of mother's outstanding attorney fees and costs.

¶ 45 Following the court's determination, father asked the district court to clarify the date on which to determine mother's outstanding attorney fees and costs and to reduce the amount to a sum certain. The court noted the ongoing litigation and fixed the date for determining mother's attorney fees and costs as December 31, 2021. Mother reported $58,600 as her outstanding attorney fees and costs (as of December 20, 2021), and the district court awarded her $29,300 (half that amount).

B. Preliminary Issue

¶ 46 Mother argues that we should not address father's contention because he agreed to the reasonableness of mother's attorney's hourly rates and did not request a hearing to challenge the amount of the outstanding attorney fees and costs. *See In re Marriage of Aldrich*, 945 P.2d 1370, 1380 (Colo. 1997) (providing that a party who fails to request a hearing on the reasonableness of attorney fees and costs waives the right to such a hearing); *see also In re Marriage of Yates*, 148 P.3d 304, 316 (Colo. App. 2006) (recognizing that a party who does not contest the requested attorney fees in the district court may not challenge them on appeal); *In re Marriage of LeBlanc*, 944 P.2d 686, 689 (Colo. App. 1997) (same).

¶ 47 Father responds that, although he did not request a hearing, he objected to the reasonableness of mother's attorney fees and costs and, in doing so, argued that mother's outstanding balance in December 2021 was unjustifiably higher than the amount she had reported at the permanent orders hearing. Thus, he argues that he sufficiently raised the issue concerning the reasonableness of mother's requested fees and costs, and the court ruled on this dispute by awarding her half her requested amount. *See In re*

Estate of Owens, 2017 COA 53, ¶ 21 (recognizing that to preserve an issue for appeal, the issue must be brought to the district court's attention so that the court has an opportunity to rule on it).

¶ 48 However, we need not resolve this dispute. Even if we assume that father sufficiently challenged the reasonableness of the attorney fees and costs award, we are not persuaded that the district court abused its discretion. *See In re Marriage of Mack*, 2022 CO 17, ¶ 12.

C. Legal Principles

¶ 49 To ensure that a party does not suffer undue economic hardship from the proceedings in a dissolution of marriage case, a court may order a party to pay a reasonable amount for the other party's attorney fees and costs based on the parties' relative economic circumstances. § 14-10-119; *In re Marriage of Gutfreund*, 148 P.3d 136, 141 (Colo. 2006). To achieve this equitable purpose, the district court must consider the relative financial status of each party. *Aldrich*, 945 P.2d at 1378. The court must also consider the reasonableness of the hourly rate and the necessity for the hours billed. *Aragon*, ¶ 9.

¶ 50 When assessing the reasonableness of the attorney fees a party seeks to recover, the court generally must calculate a lodestar amount, which represents the number of hours reasonably expended on the case multiplied by a reasonable hourly rate. *Id.* at ¶¶ 9, 15. The lodestar amount is a starting point and carries with it a presumption of reasonableness. *Id.* at ¶¶ 15, 17. The court may adjust the lodestar amount based on, as relevant here, (1) the time and labor required, the novelty and difficulty of the issues involved, and the skill necessary to perform the legal services properly; (2) the amount involved and the results obtained; and (3) the nature and length of the professional relationship with the client. *Id.* at ¶ 15; *see also* Colo. RPC 1.5(a)(1), (4), (6).

¶ 51 We review a court's decision to award attorney fees and costs for an abuse of discretion. *In re Parental Responsibilities Concerning M.E.R-L.*, 2020 COA 173, ¶ 33. We may not disturb the amount of fees and costs awarded unless it is patently erroneous and unsupported by the evidence. *See Yaekle v. Andrews*, 169 P.3d 196, 201 (Colo. App. 2007), *aff'd on other grounds*, 195 P.3d 1101 (Colo. 2008).

D. Discussion

¶ 52 In the district court's ruling, it acknowledged the need to "apply the lodestar method when determining reasonable attorney fees" under section 14-10-119 and that this "initial estimate" may be adjusted by the factors identified in *Aragon* to achieve an equitable result. The court noted that father conceded that the hourly rate charged by mother's attorney was fair and reasonable. Then, as relevant to the reasonableness of the time expended by mother's attorney, the court noted the "exceptionally contentious nature" of the proceeding, the "unique circumstances presented" by the parties, and the parties' continued litigation. *See Aragon*, ¶ 15; *see also* Colo. RPC 1.5(a)(1), (6). And it found that the outstanding amount of mother's attorney fees and costs was reasonable given "the amount in controversy, the length of time and effort required to represent [mother] effectively, the complexity of this case, and the value of the legal services to [mother]." *See Aragon*, ¶ 15; *see also* Colo. RPC 1.5(a)(1), (4).

¶ 53 While the district court did not calculate a lodestar amount, its ruling demonstrates that it considered the lodestar adjustment factors. There was no dispute as to the reasonableness of the

attorney's hourly rate, and the court made findings, supported by the record, sufficient to support the court's implied conclusion that the number of hours mother's attorney reported expending to litigate the dissolution case was reasonable. *See Aragon*, ¶¶ 9, 15. The dissolution proceeding involved many complicated issues requiring significant legal work from the attorneys. In particular, the parties disputed the appropriate allocation of parenting time for their three children given Q.N.'s specialized needs. Two experts testified on the amount of father's income and the value of his interests in his law firm and other assets. In addition, the court held a two-day hearing on permanent orders, and the parties engaged in extensive litigation after the court's permanent orders ruling.

¶ 54 Nor do we agree with father that the district court did not explain why it awarded mother one-half of her outstanding attorney fees and costs. *See Aldrich*, 945 P.2d at 1378. At the permanent orders hearing, the court noted that mother reported outstanding attorney fees and costs of at least $50,000. The court also found that father's income was approximately $15,000 per month more than mother's income. It then found that, even after an award of

maintenance to mother, the disparity in their financial situations warranted ordering father to pay half of her outstanding attorney fees and costs.

¶ 55 Father also argues that the court improperly awarded mother attorney fees and costs incurred after the permanent orders hearing. But nothing in section 14-10-119 limits the court's award to attorney fees incurred up to the date of the hearing. Moreover, the parties' disputes continued after the hearing, and the court found that their ongoing litigation warranted the award of attorney fees and costs through December 2021.

¶ 56 To the extent father notes that the district court did not determine a sum certain for the award of fees and costs until its final order on April 25, 2022, or make findings on father's outstanding attorney fees, he develops no legal argument that such circumstances require reversal.[4] We therefore will not further

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[4] A motions division of this court initially dismissed without prejudice father's appeal of the permanent orders ruling for lack of a final, appealable order. *In re Marriage of Goldstone*, (Colo. App. No. 22CA0313, Apr. 27, 2022) (unpublished order). Following the court's ruling that determined a sum certain for the amount of mother's attorney fees and costs, the motions division granted father's request to reopen the appeal. *In re Marriage of Goldstone*, (Colo. App. No. 22CA0313, May 6, 2022) (unpublished order).

address those issues. *See Westrac, Inc. v. Walker Field*, 812 P.2d 714, 718 (Colo. App. 1991) ("Because defendant has failed to specify why the trial court erred, we will not review the ruling . . . .").

¶ 57 Thus, the district court did not abuse its discretion by awarding mother $29,300 for her attorney fees and costs.

VI. The Money Judgment Order

¶ 58 Following the district court's permanent orders ruling but before it issued its final judgment, which resolved the attorney fees and costs award, mother sought relief from the court for father's alleged failure to transfer to her marital property the court had allocated to her in its permanent orders. The district court granted mother's request to enter a money judgment, and it awarded her interest on the judgment under section 5-12-102(1), finding that father had wrongfully withheld the property. Father contends that the court erred by (1) awarding mother interest; (2) amending its permanent orders; and (3) failing to hold a hearing before finding that he did not comply with the property division orders. We address his contentions in turn.

A. Relevant Facts

¶ 59 Recall that, in the district court's property division, it allocated to mother the following funds from the TD Ameritrade account: $158,375 based on the October 2021 value and 45% of any increase to the account as of November 16, 2021 (the date of the court's permanent orders ruling).

¶ 60 Additionally, the court's property division allocated to mother a Chase account and a Wells Fargo account.[5] The court found that, in October 2021, the Chase account had a $2,923 balance and the Wells Fargo account had a $50,591 balance. The court also ordered the parties to equally divide any 10% or greater fluctuation in the value of these accounts. Then, in a January 7, 2022, order, the court amended the property division (at father's request) to clarify that any fluctuations in the value of the Chase and Wells Fargo accounts were to be determined as of November 16, 2021.

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[5] Although the district court allocated other accounts from these financial institutions, the issues on appeal concern only the Chase checking account x7523 and the Wells Fargo certificate of deposit account x3692. For simplicity, we refer to these accounts as the Chase account and the Wells Fargo account.

¶ 61 Later, but before the district court resolved mother's section 14-10-119 attorney fees and costs request, mother moved for the entry of a money judgment in the amount of the TD Ameritrade, Chase, and Wells Fargo accounts that had been awarded to her, and asked the court to impose prejudgment interest, alleging that father had improperly withheld these funds from her. The district court ruled as follows:

- It determined that, based on the TD Ameritrade account's value on November 16, 2021, mother was entitled to $178,137. The court ordered father to pay mother this amount within one week. The court also found that father had wrongfully withheld this money from mother since November 16, 2021, and it awarded her interest under section 5-12-102(1) to accrue from that date until he paid her in full.
- It determined that, given the value of the Chase account on November 16, 2021, mother was entitled to $3,355. The court found that father had wrongfully withheld the funds in this account since January 7, 2022, and it

ordered him to pay mother interest under section 5-12-102(1) to accrue from that date until he paid her in full.

- It found that father had wrongfully withheld the funds from the Wells Fargo account between January 7, 2022, and the date he paid them to her, January 26, 2022. The court ordered him to pay her interest under section 5-12-102(1) for the period of his withholding.

¶ 62 A few weeks later, the court entered its final determination on mother's attorney fees and costs.

B. Prejudgment Interest

¶ 63 Father contends that the district court lacked the legal authority to award mother prejudgment interest under section 5-12-102(1). We conclude that, under the procedural posture here, the court had the authority to enforce its permanent orders and direct father to pay interest before it had issued its final judgment. However, we agree with father that the court erred in its choice of date on which interest began to accrue. We therefore reverse the court's interest award and remand the case for further proceedings.

1. The District Court's Authority

¶ 64 The district court is vested with the authority to enforce its orders concerning the dissolution of a marriage. *See In re Marriage of Nussbeck*, 974 P.2d 493, 497 (Colo. 1999); *see also Wilson v. Prentiss*, 140 P.3d 288, 291 (Colo. App. 2006) ("The dissolution court retains jurisdiction to enforce its orders and to ensure complete resolution of the issues addressed in the orders, including marital property division."). The court may, within its discretion, use any method prescribed by statute to enforce those orders. § 14-10-118(2), C.R.S. 2023; *see also In re Marriage of Evans*, 2021 COA 141, ¶ 68 (recognizing the court's discretionary authority under section 14-10-118(2)). We conclude that one such method is the assessment of prejudgment interest.

¶ 65 Under section 5-12-102(1), a party may receive interest of 8% per annum when property is wrongfully withheld. For purposes of this statute, the withholding need not have been done through misconduct or bad faith. *Thompson v. Catlin Ins. Co. (UK) Ltd.*, 2018 CO 95, ¶ 37. Rather, the statute recognizes the time value of money and is broadly construed to effectuate its purpose of compensating a party for the deprivation of the ability to use

property when the party is entitled to have received it. *Id.* at ¶ 34; *Westfield Dev. Co. v. Rifle Inv. Assocs.*, 786 P.2d 1112, 1122 (Colo. 1990); *see also Goodyear Tire & Rubber Co. v. Holmes*, 193 P.3d 821, 826 (Colo. 2008) ("[T]he purpose of prejudgment interest is to reimburse the plaintiff for inflation and lost return.").

¶ 66 When a court enters permanent orders, it generally fully resolves the parties' disputes, resulting in the entry of a final judgment. *See* C.R.C.P. 54(a); C.R.C.P. 58(a); *see also In re Marriage of Hill*, 166 P.3d 269, 271 (Colo. App. 2007) (explaining that a judgment is final when it disposes of all the litigation, leaving nothing for the court to do but execute on the judgment). The entry of a final judgment allows a party to recover postjudgment interest until the judgment is satisfied. *See* § 5-12-102(4); *In re Marriage of Rodrick*, 176 P.3d 806, 814 (Colo. App. 2007) (recognizing that postjudgment interest may be imposed on the court's property division); *see also In re Aube*, 969 A.2d 338, 342 (N.H. 2009) (noting that a majority of jurisdictions award statutory postjudgment interest on marital property division judgments).

¶ 67 Here, the district court's ruling divided the parties' marital property and, in doing so, allocated to mother funds from the TD

Ameritrade, Chase, and Wells Fargo accounts. *Cf. Consol. Landscape v. Indus. Claim Appeals Off.*, 883 P.2d 571, 572 (Colo. App. 1994) (providing that the ruling was effective on the date it was announced). However, that ruling did not fully resolve all the parties' disputes. The court still needed to determine a sum certain on mother's request for attorney fees and costs under section 14-10-119 to render a final judgment, which did not happen until April 25, 2022. *See Hill*, 166 P.3d at 272 (holding that the final judgment in a dissolution proceeding requires the court to determine several intertwined issues, including attorney fees and costs, which, if awarded, must be reduced to a sum certain).

¶ 68 Even though the judgment was not yet final when the district court entered its money judgment order, the court was not prevented from enforcing its property division ruling. *See People in Interest of J.M.*, 74 P.3d 475, 477 (Colo. App. 2003) (acknowledging that an order was not void or invalid for enforcement purposes merely because it was not final for purposes of appeal); *Consol. Landscape*, 883 P.2d at 572 (noting that an oral ruling was effective notwithstanding that it was not final for purposes of review). In January 2022, mother informed the court that she had not received

the funds from the TD Ameritrade, Chase, or Wells Fargo accounts that the court had allocated to her in its property division. Father acknowledged that he had not provided mother with the funds from the TD Ameritrade and Chase accounts and said that he had only recently provided her with the Wells Fargo account funds. The district court thus had the discretionary authority to enforce its property division ruling and invoke the relief set forth in section 5-12-102(1) to compensate mother for being deprived of the use of these funds. *See* § 14-10-118(2); *Laleh v. Johnson*, 2016 COA 4, ¶ 31 (acknowledging the district court's inherent authority to effectuate and ensure enforcement of its prior orders), *aff'd on other grounds*, 2017 CO 93; *In re Marriage of Mockelmann*, 121 P.3d 335, 336-37 (Colo. App. 2005) (providing that the district court may exercise its equitable powers where necessary to enforce its permanent orders); *see also Fields v. Fields*, 58 S.W.3d 464, 465-67 (Ky. 2001) (affirming a court's decision to award the wife prejudgment interest on marital property controlled by the husband for the time between the entry of an interlocutory divorce decree and the judgment on property division).

2. Date of Interest Accrual

¶ 69 Although the district court was authorized to issue an order directing father to pay interest, that does not end our review. Father contends that the court still abused its discretion by ordering the accrual of interest to begin for the funds in the TD Ameritrade account on November 16, 2021, and the Chase and Wells Fargo accounts on January 7, 2022. We agree.

¶ 70 Interest for purposes of section 5-12-102(1) begins to accrue on the date when (1) the property becomes due or (2) the property is wrongfully withheld. That interest will continue to accrue through the date the party receives the property or when the judgment is entered, whichever occurs first. § 5-12-102(1). A court invoking section 5-12-102(1) to enforce its property division ruling must be guided by this statute when determining the date from which interest accrues.

¶ 71 The district court's permanent orders allocated to mother funds from the TD Ameritrade account and the Chase and Wells Fargo accounts. However, the court did not specify the date on which father was required to complete his transfer of those marital assets to mother. The court therefore did not direct any date on

which the property became due. *See id.*; *cf. In re Marriage of Schutte*, 721 P.2d 160, 161 (Colo. App. 1986) (discussing that, when the court's property division directed the wife to pay the husband the proceeds from the sale of the marital home one year after its sale, the court erred by assessing the accrual of interest before the date the proceeds were due).

¶ 72 In the absence of a date certain for the transfer, the court's imposition of interest relied on the date of wrongful withholding. The period of wrongful withholding under section 5-12-102(1) is measured from the time of the party's injury. *See Thompson*, ¶ 37. An injury is realized when, under the circumstances, the party has a reasonable expectation of receiving the property but did not receive it. *See id.*

¶ 73 Following the entry of permanent orders, transferring marital assets may require coordination and cooperation between the parties and, in the case of certain retirement accounts, may require using a third party to create a qualified domestic relations order. *See In re Marriage of Drexler*, 2013 COA 43, ¶ 7 (noting that a qualified domestic relations order is a mechanism that allows a former spouse to receive all or a portion of the benefits owed to a

participant under a retirement plan). Therefore, depending on the nature of the property, a party may not have a reasonable expectation of receiving a marital asset until sometime after the entry of the court's ruling because it may be impractical, if not impossible, for a party to transfer property to the other party on the date the court entered its ruling. As a result, a court dividing marital assets should afford the parties a reasonable time within which to effectuate the court-ordered property transfer before it finds that a party wrongfully withheld the asset and begins the accrual of interest to enforce its property division ruling.[6] *Cf. In re Marriage of Cyr*, 186 P.3d 88, 95 (Colo. App. 2008) (acknowledging that when a time for performance is not specified, the law implies a reasonable time for performance).

¶ 74 The district court found that, because it had allocated the assets to mother in its permanent orders on November 16, 2021, and clarified its allocation of the Chase and Wells Fargo accounts in its January 7, 2022, order, father had wrongfully withheld the TD

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[6] Because this appeal concerns only the court's order for interest under section 5-12-102(1), C.R.S. 2023, as a way to enforce its ruling under section 14-10-118(2), C.R.S. 2023, our discussion is limited to those circumstances.

Ameritrade account funds since November 16, 2021, and the funds from the Chase and Wells Fargo accounts since January 7, 2022. But nothing in the record indicated that father was capable of transferring to mother the funds in the TD Ameritrade account on November 16, 2021, or the funds in the Chase and Wells Fargo accounts on January 7, 2022. The TD Ameritrade account was a retirement account that would require a qualified domestic relations order, and, as the district court noted in its January 7, 2022, order, at that time, the parties had been unable to employ a third party to complete the qualified domestic relations order. Father also discussed difficulties coordinating with mother to complete the transfers for the funds from the Chase and Wells Fargo accounts. The district court made no findings addressing these circumstances or explaining why, given father's representations, mother had a reasonable expectation that she would receive the assets on the dates of the court's rulings. Thus, we agree with father that the district court erred in choosing the dates on which he wrongfully withheld the funds from these accounts and assessing the accrual of interest.

¶ 75 In sum, while the district court had the authority to enforce its property division ruling and order father to pay interest under section 5-12-102(1) before the court issued its final judgment, *see* § 14-10-118(2), the court erred in determining when interest began to accrue on the wrongfully withheld funds. The court's determination was not based on the specific date upon which a transfer was ordered due, did not afford father a reasonable time to effectuate the transfer of the funds to mother, and was not supported by findings to explain why mother had a reasonable expectation of receiving the funds from the TD Ameritrade account on November 16, 2021, and the Chase and Wells Fargo accounts on January 7, 2022.

¶ 76 We therefore reverse the court's interest award and remand the issue to the district court for reconsideration. If the court again determines that an award of interest under section 5-12-102(1) is warranted, the court must determine a reasonable date on which father could have adhered to the property division order and transferred these funds to mother before beginning its accrual of interest. The court, in its discretion, may receive additional

evidence or may rely on the evidence previously submitted to the court to make its determination.

¶ 77 Given our conclusion, we need not address father's additional arguments challenging the court's interest award.

C. Amending the Allocation of the TD Ameritrade Account

¶ 78 Father next contends that, in the money judgment order, the district court amended its allocation of the TD Ameritrade account without jurisdiction by requiring him to "pay" mother $178,137 instead of transferring the retirement funds through a qualified domestic relations order. We question whether the court modified any aspect of its permanent orders, but even if we were to assume that the court did so, the court was not deprived of jurisdiction to modify its allocation of these funds.

¶ 79 Although a court may not alter, amend, or vacate a final judgment dividing the marital estate except through C.R.C.P. 59 or 60 relief, *see In re Marriage of McKendry*, 735 P.2d 908, 909 (Colo. App. 1986), it may revise "any order or judgment . . . 'at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties,'" *Przekurat v. Torres*, 2016 COA 177, ¶ 50 (quoting C.R.C.P. 54(b)), *aff'd*, 2018 CO 69.

¶ 80 As explained above, the district court's property division ruling was not final until the court fully resolved mother's request for section 14-10-119 attorney fees and costs. *See Hill*, 166 P.3d at 272. Thus, even if the court amended its property division in the money judgment order by ordering that father "pay" these funds to mother, it acted within its authority to do so.

¶ 81 We also disagree with father's suggestion that the court amended its permanent orders by determining that he owed mother $178,137 from the TD Ameritrade account. In its permanent orders, the court allocated mother $158,375, given the account's value at the time of the permanent orders hearing, and an additional 45% of the increased value in the account at the time of the permanent orders ruling. The undisputed evidence showed that the value of the account at the time of the court's permanent orders ruling had increased by $43,917. The court's money judgment order merely determined that, in light of that value, mother was entitled to an additional $19,762, which resulted in a total of $178,137 from the TD Ameritrade account. Nothing about that determination amended the court's permanent orders. To the extent father further challenges the court's decision declining to

account for the decreased value in this account after the entry of the dissolution decree, we addressed and rejected that argument in Part II.D above.

¶ 82 We therefore discern no error by the district court.

D. Failure to Comply with the Court's Property Division Ruling

¶ 83 Father also argues that the district court erroneously found that he did not comply with the property division ruling when he wrongfully withheld the funds from the TD Ameritrade, Chase, and Wells Fargo accounts. He equates the court's determination to a finding of contempt and argues that, without an evidentiary hearing, the court's finding violated his due process rights.

¶ 84 Father's argument is misplaced. The court neither found him in contempt nor imposed a contempt sanction. *See* C.R.C.P. 107(a)(1), (d)(1)-(2). Rather, the court only determined that it was appropriate to impose interest under section 5-12-102(1) because father had wrongfully withheld these assets from mother. Father directs us to no legal authority that required the court to hold a hearing before making that determination. *See* C.R.C.P. 121, § 1-15(4) (noting that, if possible, motions can be determined promptly based on the briefs).

¶ 85 In any event, the court's determination concerning the date of father's wrongful withholding is reversed, and we have remanded that issue to the district court for reconsideration. We therefore decline to further address father's contention.

VII. Appellate Attorney Fees

¶ 86 Mother requests an award of her attorney fees on appeal under section 14-10-119 due to the relative disparity in the parties' economic circumstances. Because the district court is better equipped to determine the factual issues regarding the parties' current financial resources, we direct it to address this request on remand. *See* C.A.R. 39.1; *In re Marriage of Schlundt*, 2021 COA 58, ¶ 54.

¶ 87 Mother also argues that she is entitled to attorney fees and costs because father's appeal lacked substantial justification. *See* § 13-17-102(4), C.R.S. 2023. Given our disposition, we deny this request. *See In re Marriage of Martin*, 2021 COA 101, ¶ 42.

VIII. Disposition

¶ 88 We reverse the portion of the district court's judgment that awarded mother prejudgment interest. The judgment is otherwise affirmed. On remand, the district court shall reconsider mother's

request for prejudgment interest. In doing so, the court must determine the reasonable dates on which father could have transferred the funds from the TD Ameritrade, Chase, and Wells Fargo accounts to mother. Based on those determinations and consistent with this opinion, the court should determine whether any award of prejudgment interest is warranted and, if so, the date on which that interest will begin to accrue. The district court shall also address mother's request for appellate attorney fees under section 14-10-119. Those portions of the judgment not challenged on appeal remain undisturbed.

JUDGE KUHN and JUDGE TAUBMAN concur.