STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1458

In the Marriage of:

Karen Dennie, petitioner,
Respondent,

vs.

Ricky Dennie,
Appellant.

Filed June 23, 2025
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-FA-22-4639

Micaela Wattenbarger, Maenner Minnich PLLC, Minnetonka, Minnesota (for respondent)

John P. Lesch, Lesch Law Firm LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this marital-dissolution appeal, appellant-husband Ricky Dennie argues that the district court abused its discretion in dividing marital property by (1) excluding husband's evidence of an encumbrance on one of the parties' homes as a discovery sanction, (2) disregarding husband's testimony about an encumbrance on one of the parties' vehicles,

and (3) concluding that certain credit-card debt was marital debt. Husband also asserts that the district court (4) erred in awarding respondent-wife Karen Dennie conduct-based attorney fees and (5) failed to conduct an independent review of the evidence and arbitrarily adopted wife's proposed findings and conclusions. We affirm.

FACTS

Husband and wife were married in 2008. The parties have one minor child together. Wife commenced a dissolution action in September 2022.

In October 2022, the parties entered into a binding mediation agreement that established an informal-discovery plan. The agreement set November 30, 2022, as the deadline for exchanging information and documents related to finances and assets. The parties agreed that, if either party failed to comply with informal discovery, the other party could move for sanctions and other relief, including for attorney fees.

In February 2023, when husband had not complied with informal discovery, wife served formal discovery requests. In April 2023, husband provided what he described as a "partial response" to wife's discovery requests, which included unsworn answers to some interrogatories.

Also in April, following a status call between counsel, the parties filed written submissions related to discovery. In husband's submission, he agreed to provide all documents listed in the binding mediation agreement within 45 days. In wife's submission, she requested an order compelling husband to comply with the binding mediation agreement and her formal discovery requests. In response, the district court filed an order compelling husband to provide all documents requested by wife by June 16, 2023. The

order noted that any failure to comply could result in an award of attorney fees as well as sanctions under Minnesota Rule of Civil Procedure 37.

In June 2023, husband provided some additional information and documents to wife. These submissions were also not sworn.

In August 2023, wife filed a motion to compel discovery. She requested an award of $15,615 in conduct-based attorney fees and compensation for fees incurred in bringing her motion. The district court granted wife's motion to compel and awarded her $3,625 in conduct-based attorney fees. In its order, the district court warned husband that if he failed to fully and completely respond to wife's discovery requests, the district court could impose further sanctions, including restricting the evidence that husband could introduce at trial and awarding additional attorney fees.

Trial was scheduled for January 2024 and then continued to March 2024. Before trial, wife filed a motion in limine to bar husband from introducing any evidence at trial that he had not produced to wife through formal discovery; she also asked for attorney fees.

The district court addressed wife's motion in limine on the morning of trial. Wife specifically objected to the admission of two documents that husband had identified as proposed exhibits: closing documents and a mortgage statement, both of which related to a home that husband had purchased in Waverly in April 2023 and was living in at the time of trial. It is undisputed that husband did not produce the documents in discovery. The district court granted wife's motion to exclude the exhibits. It explained:

> I don't understand what I could have done or what [wife's counsel] could have done more during this proceeding to make [husband] comply with the discovery responses. These

> documents, in particular, seem to be fairly easy to come by. So I am going to exclude [the two exhibits] and grant the motion in limine.

The district court also sustained wife's objections to husband testifying about the financing of the Waverly home on the same basis.

Evidence was admitted at trial regarding the parties' assets and debts, including a home in Brooklyn Park in which wife was living, the parties' vehicles, and the parties' credit-card and auto-loan debts.

At the close of trial, the district court asked the parties to submit proposed findings of fact and conclusions of law. Wife submitted her proposed findings and conclusions. Husband made no posttrial submissions.

The district court filed its findings of fact, conclusions of law, and order for judgment and decree (J&D), and judgment was entered. The district court made three property divisions that are relevant to this appeal. First, it awarded each party their respective home with any associated encumbrance; it did so without determining the amount of equity in the Waverly home because there was no evidence admitted regarding a mortgage on the property. Second, in valuing a Chevrolet Silverado truck awarded to husband, the district court treated the truck as unencumbered by a loan because husband did not provide verification of any loan. And, third, the district court treated credit-card debt incurred by wife during the marriage as marital debt. Also relevant to this appeal, the district court awarded wife $10,000 in conduct-based attorney fees.

Husband appeals.

DECISION

Husband raises five arguments, which we address in turn.[1]

I. The district court did not abuse its discretion by excluding evidence of a mortgage encumbering the Waverly home.

Husband argues that the district court abused its discretion by excluding evidence of a mortgage on the Waverly home, resulting in an inequitable division of marital property.

In a marital-dissolution action, the district court must make an "equitable division" of the parties' marital property. Minn. Stat. § 518.58, subd. 1 (2024). "An equitable division of marital property is not necessarily an equal division." *Crosby v. Crosby*, 587 N.W.2d 292, 297 (Minn. App. 1998), *rev. denied* (Minn. Feb. 18, 1999). The district court has broad discretion to evaluate and divide property in a dissolution, and it "will not be overturned except for abuse of discretion." *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). A district court abuses its discretion if it resolves a matter in a manner "that is against logic and the facts on record." *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Appellate courts will affirm a district court's property division if the district court "had an acceptable

[1] In addition to these five arguments, husband alternatively argues that we should order a new trial pursuant to Minnesota Rule of Civil Procedure 59.01(a), (e), (f), or (g), because there was irregularity in the proceedings, damages were excessive, the district court made errors of law, and the decision was unjustified by the evidence and contrary to law. Because husband did not make a rule 59.01 motion in the district court, this argument is forfeited on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)).

basis in fact and principle" even though another court might have made a different determination. *Antone*, 645 N.W.2d at 100.

Minnesota Civil Rule of Civil Procedure 37.02(b) authorizes a district court to impose sanctions on a party who fails to obey a discovery order. *E.g.*, *Jadwin v. City of Dayton*, 379 N.W.2d 194, 196 (Minn. App. 1985) (discussing sanctions under rule 37.02(2)(c), which has since been renumbered as 37.02(b)(3)). A sanction may include "[a]n order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence." Minn. R. Civ. P. 37.02(b)(2). Appellate courts review a district court's discovery-related orders, including imposition of sanctions for discovery noncompliance, for an abuse of discretion. *Frontier Ins. Co. v. Frontline Processing Corp.*, 788 N.W.2d 917, 922 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010).

Husband does not dispute that he failed to comply with discovery requests and the district court's order to comply. Rather, he argues that the district court's sanction was an abuse of discretion because it resulted in too large of a financial penalty, a less onerous option was available and appropriate, and the sanction was not supported by any findings. His arguments are unconvincing.

As for the size of the penalty, husband asserts that—in addition to the award of $10,000 in attorney fees against him (which we discuss in section IV below)—he was also deprived of $94,921 in equity in the marital estate because of the sanction. He arrives at this figure by dividing in half the combined equity in the two homes—the $182,822 in equity in the Brooklyn Park home, which is agreed upon by the parties, and the equity in

the Waverly home, which he claims was $7,020 as demonstrated by the excluded exhibits. He argues that he was deprived of his share of the combined equity when the district court awarded each party their respective home without consideration of an encumbrance on the Waverly home.

In the J&D, the district court explained that husband had provided no information about the Waverly home to wife during formal discovery and that the district court had granted wife's motion in limine to exclude evidence that had not been produced in discovery. The district court stated that a property-tax estimate for the Waverly home introduced by wife showed a value of $325,800 but that there was "no information about the mortgage balance, if any, due to [husband's] failure to respond to formal discovery." The district court continued, "This lack of information is a problem of [husband's] creation. [Husband] is the only individual that had the relevant information to answer the question of the equity contained within the home he purchased." The district court stated that it had "no way of knowing if there is little equity in the home, equity comparable to [the Brooklyn Park home], or if the home is unencumbered." The district court then awarded wife the Brooklyn Park home and husband the Waverly home. It acknowledged, "This could potentially result in a lopsided division of the equity in the parties' homes but the Court has no way of knowing how lopsided, if at all, due to [husband's] actions and inactions during this process."

Husband argues that the sanction did, in fact, result in a lopsided division of equity and that the district court did have a way of knowing that it would do so because the excluded exhibits showed the mortgage and balance due on the Waverly home. But the

district court's statement in the J&D accurately reflects that the evidence admitted at trial did not contain information necessary to determine the equity in the Waverly home. And the sanction that excluded husband's proposed evidence about the mortgage was not an abuse of discretion. Minnesota Rule of Civil Procedure 37.02 specifically authorizes the exclusion of evidence as a sanction for violating a district court's discovery order. The district court had ordered husband to comply with discovery and warned him that a consequence of his failure to fully comply with discovery could be a limitation on the evidence that he could introduce at trial. Husband nevertheless failed to provide records regarding the Waverly home—records that he, as the purchaser, could easily have provided.

We are likewise not persuaded by husband's argument that the district court should have imposed a different sanction. Husband suggests that the district court could have cured any problem resulting from husband's failure to provide discovery by continuing the matter or admitting the evidence conditionally and compensating wife for any additional attorney fees due to his noncompliance. Husband provides no legal authority that a district court must impose the least onerous sanction to cure a failure to obey a discovery order. In the context of sanctions for spoliation, the Minnesota Supreme Court has stated that the party challenging the district court's choice of sanction bears the burden to show that "it is clear that no reasonable person would agree with the [district] court's assessment of what sanctions are appropriate." *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995) (quotation omitted). Applying that standard, we are not persuaded that husband has shown

that no reasonable person would agree with the district court's sanction of excluding evidence that husband failed to produce in violation of the district court's order.

Lastly, we disagree with husband's argument that the district court failed to make findings supporting the discovery sanction. In the J&D, the district court explained its reasons for excluding husband's proposed exhibits, finding that wife served husband formal discovery seeking information about his real-property interests, that husband provided no formal responses to wife, that wife brought a motion in limine to exclude information that she had requested through formal discovery that husband had not provided, and that the district court granted wife's motion based on husband's noncompliance. Therefore, the district court made sufficient findings to support its sanction of excluding husband's proposed evidence regarding a mortgage on the Waverly home.

II. The district court did not abuse its discretion by treating husband's vehicle as unencumbered.

Husband argues that the district court abused its discretion in valuing the Silverado awarded to him by treating it as unencumbered by a loan.

A district court's determination of the value of an asset is a finding of fact that "shall not be set aside unless clearly erroneous on the record as a whole." *Maurer v. Maurer*, 623 N.W.2d 604, 606 (Minn. 2001). Appellate courts "giv[e] deference to the district court's opportunity to evaluate witness credibility and revers[e] only if [they] are left with the definite and firm conviction that a mistake has been made." *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019) (quotation omitted) (discussing the clear-error standard of review in the context of a child-custody matter). Broad deference is afforded to findings

on asset valuation "because valuation is necessarily an approximation in many cases." *Maurer*, 623 N.W.2d at 606 (quotation omitted).

The district court determined that the vehicle was worth $50,110 based on husband's submissions. Wife submitted evidence of a Kelley Blue Book trade-in value of $43,950 based on her estimate of the mileage on the vehicle. The district court accepted husband's value, explaining that, because it was a vehicle in husband's possession, "presumably he [was] more familiar with the value than [wife]" was.

The district court did not find that the vehicle was encumbered by a loan; instead, it stated that it would "treat the vehicle as unencumbered as no verification of the loan was provided." The district court stated that husband's balance sheet noted a loan against the vehicle "but no exhibit was submitted to confirm the loan." It also noted that wife's balance sheet "[did] not note the loan." Husband testified that there was a loan on the Silverado with an outstanding balance of "probably about 40 some thousand dollars," but he acknowledged that there was no documentation of the loan within the exhibits. Wife testified that she was aware of a loan on the Silverado but that the loan's exact value was never disclosed to her.

Husband seems to argue that, because the district court found credible his proposed value of $50,110, it had to also find credible his testimony that there remained a loan balance on the vehicle. We disagree. Husband's $50,110 value could reasonably be found credible because it did not conflict with wife's evidence of a lower estimated trade-in value and because husband was not advantaged by having the vehicle valued higher than wife's proposed value. In contrast, the evidence supporting an encumbrance, which would have

benefited husband, was wife's statement that she was aware of a loan and husband's uncorroborated testimony that he owed "probably about 40 some thousand dollars" on the Silverado.

In *Nemmers v. Nemmers*, we determined that a district court erred in its valuation of a business and the business's inventory in a dissolution matter. 409 N.W.2d 225, 228 (Minn. App. 1987). One party provided a "rough estimate" of the business and inventory's value, "not based on an itemized inventory . . . or any other evidence," and the party had "never moved for a discovery order to assess the actual number and value of the [inventory]." *Id.* "Because of the limited evidence demonstrating value and the [district] court's inconsistent valuation," we determined that the district court's valuation of the business and its inventory was erroneous and required remand to revisit the findings. *Id.*

Nemmers illustrates that erroneous valuation of assets in the division of property in a dissolution matter may occur when the district court bases valuation on a "rough estimate." Here, it would have been erroneous for the district court to find that no loan existed because husband and wife both testified that a loan encumbered the Silverado, but that is not what the district court did; instead, it determined that it would "*treat* the vehicle as unencumbered as no verification of the loan was provided." (Emphasis added.) *Cf. Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *rev. denied* (Minn. Nov. 25, 2003). This determination appears to be based on concern with the credibility of

husband's inexact testimony on the loan balance and the absence of any documentation of the loan. Because the district court's credibility determinations are afforded deference, *see Thornton*, 933 N.W.2d at 790, and because husband's testimony was inexact and there was no corroboration of the loan balance, we discern no abuse of discretion in the district court's treatment of the Silverado as unencumbered.

III. The district court did not err or abuse its discretion in determining that certain credit-card debt was marital debt.

Husband argues that the district court abused its discretion by accepting, without further corroboration, wife's testimony that certain credit-card debt that she incurred during the marriage was marital debt.

The debt at issue involves $105,603 in credit-card purchases that wife made between 2018 and 2022. Wife testified that the purchases were made for herself and the family. Husband testified that, while wife sometimes shopped for his clothing, the purchases primarily benefited wife. The district court determined that the debt was marital debt. It also noted that husband had made no claim that wife's purchases were made in anticipation of divorce or that wife dissipated or wasted marital assets.

"Whether property is marital or nonmarital . . . is a question of law subject to de novo review." *Antone*, 645 N.W.2d at 100. "A [district] court's apportionment of marital debt is treated as a property division . . . ." *Berenberg v. Berenberg*, 474 N.W.2d 843, 848 (Minn. App. 1991), *rev. denied* (Minn. Nov. 13, 1991). Property acquired by either spouse during the marriage and before the valuation date—which is the date of the initially scheduled prehearing settlement conference, unless otherwise agreed upon by the parties

or decided by the district court—is presumed to be marital property, regardless of the name that the property is titled in. Minn. Stat. §§ 518.003, subd. 3b, .58, subd. 1 (2024). To rebut this presumption, it must be shown by a preponderance of the evidence that the property is nonmarital. *Baker v. Baker*, 753 N.W.2d 644, 649-50 (Minn. 2008).

"Nonmarital property" is defined as

> property real or personal, acquired by either spouse before, during, or after the existence of their marriage, which
>
> (a) is acquired as a gift, bequest, devise or inheritance made by a third party to one but not to the other spouse;
>
> (b) is acquired before the marriage;
>
> (c) is acquired in exchange for or is the increase in value of property which is described in clauses (a), (b), (d), and (e);
>
> (d) is acquired by a spouse after the valuation date; or
>
> (e) is excluded by a valid antenuptial contract.

Minn. Stat. § 518.003, subd. 3b. Appellate courts "have interpreted nonmarital property narrowly because the Legislature created only five enumerated exceptions to the expansive definition of what constitutes marital property." *Gill v. Gill*, 919 N.W.2d 297, 302-03 (Minn. 2018) (quotations omitted).

Because marital debts are treated the same as assets when dividing property upon dissolution, *see Berenberg*, 474 N.W.2d at 848, we apply the statutory definitions of marital and nonmarital property to the credit-card debt at issue, *see* Minn. Stat. § 518.003, subd. 3b. The credit-card debt was incurred between 2018 to 2022, well after the parties entered into the marriage. The default valuation date was the date that the parties engaged in an initial case-management conference in late 2022. *See* Minn. Stat. § 518.58, subd. 1

(defining default valuation date). Because the debts were incurred during the marriage,[2] they are presumed to be marital. *See* Minn. Stat. § 518.003, subd. 3b.

We next consider whether husband rebutted the marital-property presumption by showing by a preponderance of the evidence that the debt was nonmarital. *See Baker*, 753 N.W.2d at 649-50. Section 518.003, subdivision 3b, identifies five categories of nonmarital property. Husband has not tied his argument to any of these categories. Instead, he argues that wife's spending was nonmarital because it was solely for her benefit and he was averse to consumer debt. And he suggests that the district court abused its discretion by crediting wife's testimony since it did not require her to corroborate her claims that the debt was marital.

Husband's arguments are unpersuasive. The district court relied on wife's testimony that the purchases were made for the family, and we defer to the district court's credibility determinations. *See Thornton*, 933 N.W.2d at 790. And, because husband bore the burden to demonstrate that the debt was nonmarital, the district court was under no obligation to require corroboration of wife's testimony. We discern no error or abuse of discretion in the district court's determination that the credit-card debt was marital.[3]

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[2] We observe that one credit-card purchase for $482.48 was incurred two months after the initial case management conference, but husband makes no argument that, on that basis, the debt accrued through that purchase was not within the statutory definition of marital property. *See* Minn. Stat. § 518.003, subd. 3b.; *Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (ignoring prejudicial error when prejudice is de minimis).

[3] In his brief, husband characterizes wife's spending as "lavish" and "beyond her means," but he does not argue (and did not argue in the district court) that the credit-card debt constituted a dissipation of marital assets or disposal of marital assets in contemplation of dissolution. *See* Minn. Stat. § 518.58, subd. 1a (2024); *Kremer v. Kremer*, 889 N.W.2d 41,

IV. The district court did not abuse its discretion by granting wife's request for conduct-based attorney fees.

Husband challenges the district court's award of $10,000 in conduct-based attorney fees to wife.

Minnesota Statutes section 518.14, subdivision 1a (2024), permits the award of conduct-based attorney fees in a dissolution matter. *See Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001) (addressing the then-existing version of the attorney-fee statute). The award of conduct-based attorney fees is "discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). Attorney-fee awards "normally will not be disturbed absent a clear abuse of discretion." *Erickson v. Erickson*, 452 N.W.2d 253, 256 (Minn. App. 1990). A district court abuses its discretion by making a decision that is "against logic and the facts on record," making factual findings that the record does not support, or misapplying the law. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010).

52-53 (Minn. App. 2017) (using the term "dissipation" to describe conduct under section 518.58, subdivision 1a), *aff'd on other grounds*, 912 N.W.2d 617 (Minn. 2018).

We note that, in one sentence in the introductory paragraph of the argument section of his brief, husband refers to wife's "depletion of a marital asset" by moving money from a retirement account to a nonmarital 529 education account during the dissolution action. But husband provides no legal authority for the argument and does not address the issue further in his brief. "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." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). We do not discern any obvious prejudicial error, and the argument is therefore forfeited.

Conduct-based attorney fees may be awarded "against a party who unreasonably contributes to the length or expense of the proceeding or whose unreasonable failure to comply with an order . . . causes the other party to seek enforcement or other relief." Minn. Stat. § 518.14, subd. 1a. When awarding conduct-based attorney fees, the district court is required to "consider the circumstances and any other factors that contributed to the length or expense of the proceeding." *Id.* The impact of a party's behavior on litigation costs is one factor that the district court may consider when awarding attorney fees. *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991).

Husband argues that the award of $10,000 in attorney fees was error because the district court did not explain how husband's failure to produce discovery about the Waverly home unreasonably contributed to the length or expense of litigation, because his failure to produce the information hurt only him, and because adding $10,000 on top of the effect of excluding the evidence about the Waverly home was "unnecessary" and "overkill." We are not convinced.

First, the district court adequately explained how husband's noncompliance contributed to the length and expense of the proceedings. In the J&D, the district court found that husband "unreasonably contributed to the length and expense of this proceeding." It wrote that "[t]he consequences of [husband's] failure to comply with [the September 2023 order compelling discovery] are found throughout this [J&D]." The J&D includes findings that, based on husband's noncompliance, wife brought a motion in limine, which the district court then granted. The time and expense involved in pursuing the motion in limine were consequences of husband's failure to comply with the district

court's order. In addition, the district court found that "[t]here was never an opportunity for meaningful settlement conversations because of [husband's] failure to provide information." It is logical to conclude that a trial was difficult to avoid when husband refused to provide basic information about a significant marital asset.

Second, husband did not bear the cost of his noncompliance alone. As just discussed, wife incurred attorney fees due to his noncompliance with discovery.

Finally, the $10,000 award was not excessive. Minnesota Rule of Civil Procedure 37.03(a) authorizes sanctions for discovery noncompliance while also contemplating the possibility that other sanctions, including attorney fees related to such noncompliance, may be awarded "[i]n addition to or instead of" rule 37 sanctions. The district court warned husband that sanctions for violating the September 2023 order could include both the exclusion of evidence at trial and the award of attorney fees. We discern no abuse of discretion in the district court excluding evidence as a discovery sanction and awarding conduct-based attorney fees.

V. The district court conducted an independent review of the evidence and did not arbitrarily adopt wife's proposed findings and conclusions of law.

Husband argues that the district court arbitrarily and "wholesale" adopted wife's positions and claims on financial issues, demonstrating that the district court failed to independently review the evidence. This argument is unconvincing.

"[T]he verbatim adoption of a party's proposed findings and conclusions of law is not reversible error per se." *Bliss v. Bliss*, 493 N.W.2d 583, 590 (Minn. App. 1992), *rev. denied* (Minn. Feb. 12, 1993). But, while the practice is permitted, this court has "strongly

caution[ed] that wholesale adoption of one party's findings and conclusions raises the question of whether the [district] court independently evaluated each party's testimony and evidence." *Id.*

Here, after trial, wife submitted to the district court her proposed findings, conclusions, and order for judgment and decree. Husband did not submit a proposal to the district court. The district court adopted verbatim a significant portion of wife's proposed findings of fact and conclusions of law, but it did not do so in an entirely "wholesale" manner, as husband contends. Instead, the district court made changes throughout, including correcting factual errors and making some determinations and rulings that were distinct from wife's proposed submission. The variations between wife's proposed findings and conclusions and the J&D demonstrate that the district court did not arbitrarily adopt wife's proposals but instead engaged in an independent review of the evidence.

Affirmed.