

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

DICKES V. DICKES

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

MACIE R. DICKES, APPELLEE,

v.

KODY M. DICKES, APPELLANT.

Filed August 18, 2026. No. A-25-545.

Appeal from the District Court for Saunders County: CHRISTINA M. MARROQUIN, Judge.
Affirmed.

Robert B. Creager, of Anderson, Creager & Wittstruck, P.C., L.L.O., for appellant.

No appearance for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

BISHOP, Judge.

INTRODUCTION

Kody M. Dickes appeals from the decree of the Saunders County District Court dissolving his marriage to Macie R. Dickes, dividing their property and debts, and awarding sole custody of the parties' two children to Macie. On appeal, Kody assigns as error the district court's denial of his oral request for a continuance of trial, the court's legal classification of certain assets, and the court's failure to award him any parenting time with his children due to his incarceration. We affirm.

BACKGROUND

Kody and Macie were married in February 2024. The parties have two daughters, one born in 2021, and the other in 2024.

On the night of October 23, 2024, the parties' marital home located in Ashland, Nebraska, was "raided" by state and federal law enforcement. Officers confiscated all electronic devices in the residence and advised that Kody was under investigation for possession of child pornography. No arrest was made that night.

PLEADINGS AND TEMPORARY ORDER

Macie filed a complaint for dissolution of marriage on November 27, 2024. Relevant to this appeal, the complaint requested an equitable division of the marital estate and sole legal and physical custody of the children.

Contemporaneous with her complaint, Macie filed an ex parte motion requesting, among other things, temporary custody of the children. In support of the motion, Macie submitted an affidavit which provides insight into the circumstances leading to the filing of her complaint. According to the affidavit, Kody "voluntarily agreed" to leave the marital home and stay with his mother after the law enforcement raid. Due to the seriousness of the allegations against Kody, the Nebraska Department of Health and Human Services (DHHS) contacted the parties and established a "safety plan" to facilitate contact between Kody and the children. The safety plan required Kody to attend counseling, undergo a mental health evaluation, and participate in supervised parenting time with the children outside of the marital home. Although Kody initially agreed to follow the safety plan, he later informed DHHS and law enforcement that he would no longer comply with its terms. Macie averred that Kody began to act "strangely, asking if he [could] see [the] children so he [could] 'tell them goodbye.'" She "suspect[ed]" that Kody was not taking his daily medication for depression and anxiety. The district court granted Macie's ex parte motion and awarded her temporary custody of the children.

Kody filed an "Answer and Cross-Complaint" on December 8, 2024, which we will refer to as his answer and counterclaim. See Neb. Ct. R. Pldg. § 6-1107(a) (rev. 2025) (permitted pleadings). In his counterclaim, Kody alleged that the best interests of the children would be served if their "legal and physical care, custody, and control [was] awarded jointly to the parties." He also requested that he share joint custody of the children with Macie on a temporary basis throughout the pendency of the dissolution proceedings.

After a hearing, the district court entered an order on January 8, 2025, stating its ex parte order granting Macie sole custody of the children "shall remain in full force and effect." However, the court granted Kody supervised parenting time every Tuesday, Thursday, and Sunday. On January 16, Kody filed a motion to set the case for trial; it was scheduled for May 22.

KODY'S ARREST AND DETENTION

While the precise date is not disclosed in our record, Kody was arrested and charged with federal crimes prior to the dissolution trial. During her testimony at the dissolution trial, Macie identified the charges against Kody as "[c]hild pornography distribution" and "child pornography possession." Kody was detained at the Saline County jail in Wilber, Nebraska, awaiting a criminal trial. In a motion filed on May 7, 2025, Kody indicated that he was "recently" "arrested and incarcerated" and sought permission to appear and testify virtually at the dissolution trial. While the district court initially entered an order granting Kody's request, it subsequently vacated the order on May 13. The court explained that its bailiff had been informed by the jail that Kody was

unable to “participate in court hearings without [] the filing of a writ” due to his “federal status.” The court noted that no writ had been obtained or provided to the facility.

ORAL MOTION TO CONTINUE DISSOLUTION TRIAL

On May 22, 2025, the day trial was scheduled to commence, Kody’s counsel made an oral motion to continue proceedings until such time as Kody could appear. Counsel stated:

It’s my understanding that the Saline County Sheriff’s Department had indicated that since they didn’t get the writ prior to, I want to say noon, not yesterday but I think the day before, which I didn’t know that was part of anything that they had requested, the writ was done, and the Court did sign it before then, but I think it was up to me to get them the writ so they’re being somewhat difficult.

And additionally, it was something that they did not have the staff to do the time frame that we had requested him to be available by Zoom. We had figured out a way to get around that, but, in any event, [Kody] is not appearing by Zoom. So, we would like a continuance until such time as that writ can be served on them and we can have [Kody] available to assist counsel. Right now, you know, I don’t — I don’t know what to ask the wife without his input and him being able to see the wife’s testimony, etc. That’s all I have, Judge.

Macie’s counsel objected to a continuance, arguing that Kody’s counsel “was aware trial was set,” “had plenty of time to anticipate questions and plan for the issues,” and had “subpoenaed his own medical witness to come and testify.” Also, Macie had taken time off work to be present for trial and she and her counsel were prepared to proceed. The district court then overruled the request for a continuance without explanation, and the matter proceeded to trial.

DISSOLUTION TRIAL

Macie was the only witness to testify at trial. We summarize those portions of her testimony that are relevant to the issues on appeal.

Macie did not dispute that Kody bought the marital home prior to the parties’ marriage. Macie testified that the property was purchased for \$495,000 and that Kody used “profit from the sale of [an] acreage” to make a sizable downpayment. During direct examination, Macie was asked if she had requested “information” and “loan documents” related to the purchase of the marital home during the course of the divorce proceedings. She responded in the affirmative but agreed with her counsel that the requested material had not been provided. Macie was handed a bank statement (ending in account numbers 4395) that was referred to by her counsel as exhibit 22. It was a checking account maintained by Kody. The statement showed a \$95,763.41 payment on July 21, 2023. It was Macie’s understanding that those funds came from “[t]he sale of the acreage,” a property where she had lived with Kody previously. The bank statement was not offered into evidence and does not appear in our record on appeal.

Little was known about the mortgage on the marital home. When asked on direct examination whether she knew how much monthly mortgage payments were for the property, Macie responded, “I do not.” However, on cross-examination by Kody’s counsel, Macie intimated that monthly payments were around \$3,000. She readily conceded that Kody was responsible for

making monthly mortgage payments on the property. She did, however, testify to “one time” where she contributed \$2,500 to a mortgage payment. The marital home sold for \$515,000 in March 2025. No evidence was offered showing the balance of the mortgage at the time of marriage, nor how much the mortgage principal had been reduced from the time of the parties’ marriage until the time of sale. There was also no evidence offered regarding the amount of net proceeds received from the sale of the residence.

There was limited evidence presented on the bank account ending in “0088.” Reference was made to exhibit 29; however, that exhibit was not offered or received into evidence. Nevertheless, referring to that exhibit, Macie testified that this was a bank account in Kody’s name that she did not know about until recently and that it appeared to have been opened on March 11, 2025; it had a balance of \$86,768.24. No evidence was offered to show the source of these funds. Macie indicated that Kody had not identified the account in his property statement prepared for the case, nor was it contained in Kody’s “proposed spreadsheet.” She believed the bank document came from Kody or his attorney. Macie requested that the district court award her half of the account to the extent the court determined it was opened during the marriage and was a marital asset.

Regarding the issues of custody and parenting time, Macie offered a proposed parenting plan to the district court that provided her with sole legal and physical custody of the children. The proposed parenting plan did not provide Kody with any parenting time, due to “extraordinary circumstances.” Instead, parenting time was to be at Macie’s “sole discretion until such time as [Kody] participates in mediation with [Macie] to achieve a mutually agreeable visitation plan.”

Macie indicated that as of the time of her testimony, Kody’s criminal case had not been set for trial. She agreed that the children would benefit from having two parents who “love and see and parent them,” and she had no objection to the children having weekly virtual or telephonic contact with Kody during his detention. However, Macie did not know if the jail allowed for such contact. Macie believed that Kody had not made decisions in the best interests of the children and that he would be unable to make parenting decisions during his detention or any future imprisonment.

Kody’s sole witness at the dissolution trial was Dr. Theodore DeLaet, a licensed psychologist. Dr. DeLaet had conducted a psychological examination of Kody in December 2024 and authored a report detailing his findings. However, shortly into his testimony, Macie objected “to the receipt of [Dr. DeLaet]’s testimony as non-compl[ia]nt with the discovery rules.” She indicated that notice of Kody’s intent to call Dr. DeLaet as a witness was provided only “a day or two” before trial. Macie also argued that Kody failed to disclose Dr. DeLaet’s compensation and a list of cases in which he had provided expert testimony during the preceding 4 years, as required by Neb. Ct. R. Disc. § 6-326(c)(1)(A)(vi) and (vii) (rev. 2025). After argument was had on the record, the district court determined that Kody failed to comply with § 6-326 and prevented Dr. DeLaet from providing further testimony.

DISTRICT COURT’S DECREE

The district court entered a decree of dissolution on July 9, 2025. Relevant to this appeal, the court made the following findings related to the marital home:

15. Real Estate Proceeds: According to [Macie]’s testimony, [Kody] purchased the home located [in Ashland] on July 21, 2023. [Macie] testified the home was purchased for \$492,000, and that [Kody] had applied a savings withdrawal of \$95,763 on July 21, 2023, to the mortgage. [Macie] further testified that the property was sold during the marriage for \$515,000, resulting in a profit of \$118,763. It is [Kody’s] burden to prove the extent to which marital contributions caused appreciation. *Parde v. Parde*, 313 Neb. 779[, 986 N.W.2d 504] (2023). [Kody] did not present any evidence regarding the cause of appreciation. After giving [Kody] credit for the payment of \$95,763, there results a \$23,000 marital increase in value to the property, which shall be divided equally between the parties.

The court further determined that Kody had a “savings account ending in #0088,” with “a balance of \$66,770.36.” The court noted that “[n]o evidence was offered” by Kody to show “that any portion of said account should be set off” as nonmarital property. The court awarded Macie “fifty percent” of the funds in the account.

As a result of the above determinations, the court ordered Kody to pay Macie a “property settlement payment in the amount of \$44,885.00” within 6 months of entry of the decree. This amount equals Macie’s one half of the marital portion of the house proceeds (\$11,500) after setting aside Kody’s \$95,763 nonmarital portion, plus one half of the funds in savings account #0088 (\$33,385).

As for child custody, the court awarded Macie sole custody of the children and declined to grant Kody parenting time with the children, citing a general lack of evidence. The court determined that “a parenting plan requiring parenting time between the minor children and [Kody] should not be ordered” because he “did not offer evidence of how contact with the minor children could be facilitated.” The court noted that it did “not know whether in-person and/or electronic communication is available” at the jail. The court also believed that contact would not be in the children’s best interests due to nature of the criminal allegations against Kody. It explained that “[t]here was insufficient evidence to find that the children have a beneficial relationship with [Kody] at this time.”

With new counsel, Kody appeals.

ASSIGNMENTS OF ERROR

Kody assigns, restated, that the district court abused its discretion by (1) denying his oral motion to continue trial, (2) classifying certain assets as marital property, and (3) failing to grant him parenting time with his children.

STANDARD OF REVIEW

In a marital dissolution action, an appellate court reviews the case de novo on the record to determine whether there has been an abuse of discretion by the trial judge. *Seemann v. Seemann*, 318 Neb. 643, 18 N.W.3d 118 (2025). This standard of review applies to the trial court’s determinations regarding custody, child support, division of property, alimony, and attorney fees. *Id.*

A motion for continuance is generally addressed to the discretion of the trial court, whose ruling will not be disturbed on appeal in the absence of an abuse of discretion. *Weiss v. Weiss*, 260 Neb. 1015, 620 N.W.2d 744 (2001).

A judicial abuse of discretion exists if the reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in the matters submitted for disposition. *Seemann v. Seemann*, *supra*.

ANALYSIS

MOTION TO CONTINUE

Kody asserts that the district court erred in denying his oral request for a continuance to ensure that he was able to participate in the dissolution trial. On appeal, Kody argues that his “unavailability arose shortly before trial,” and the motion to continue was not made for the purpose of delaying trial. Brief for appellant at 7. He contends that the court’s refusal to grant a continuance was prejudicial because “he was not afforded an opportunity to rebut Macie’s claim to his premarital assets, or to deal with issues of visitation while incarcerated.” *Id.* at 5.

At the outset, we note that a party to a civil action ordinarily has a right to be present at the trial, but his or her inability to be present does not necessarily warrant a continuance of the trial. *Jordan v. Butler*, 182 Neb. 626, 156 N.W.2d 778 (1968). Additionally, Neb. Rev. Stat. § 25-1148 (Reissue 2016) governs the requirements for requesting a continuance and provides, in part:

Whenever application for continuance or adjournment is made by a party or parties to any cause or proceeding pending in the district court of any county, such application shall be by written motion entitled in the cause or proceeding and setting forth the grounds upon which the application is made, which motion shall be supported by the affidavit or affidavits of person or persons competent to testify as witnesses under the laws of this state, in proof of and setting forth the facts upon which such continuance or adjournment is asked.

An oral request is not sufficient to comply with the above requirements. *In re Interest of Azia B.*, 10 Neb. App. 124, 626 N.W.2d 602 (2001). In the instant case, Kody’s trial counsel made an oral motion to continue on the day of the dissolution hearing. Our record does not show that any written application for a continuance or a supporting affidavit was submitted to the district court. Kody’s failure to comply with the provisions of § 25-1148 is a factor that we consider when determining whether the trial court abused its discretion in denying his motion to continue trial. See *Velehradsky v. Velehradsky*, 13 Neb. App. 27, 688 N.W.2d 626 (2004).

However, Kody’s failure to follow the requirements of § 25-1148 is not fatal. See *State on behalf of Keegan M. v. Joshua M.*, 20 Neb. App. 411, 824 N.W.2d 383 (2012) (while compliance with § 25-1148 is relevant to abuse of discretion analysis, it is not determinative). This is because failure to comply with § 25-1148 is a procedural defect that affects the technical rights of an opposing party. *Id.* It does not affect the opposing parties’ substantial rights. *Id.* This court has previously explained that “we assess a motion to continue that does not fully comply with § 25-1148 ‘in the broader context of Nebraska jurisprudence focusing on the parties’ substantial rights.’” *Id.* at 419, 824 N.W.2d at 390 (quoting *State v. Vela-Montes*, 19 Neb. App. 378, 807 N.W.2d 544 (2011)). Accordingly, we “‘concentrate on whether the continuance was justified in light of [the moving parties’] representations of cause.’” *Id.* (brackets in original).

In addition to a party's compliance with § 25-1148, an appellate court considers three analytical factors when reviewing a trial court's denial of a continuance: (1) the number of continuances granted to the moving party, (2) the importance of the issue presented in the matter, and (3) whether the continuance was being sought for a frivolous reason or a dilatory motive. See, *Weiss v. Weiss*, *supra*; *Adrian v. Adrian*, 249 Neb. 53, 541 N.W.2d 388 (1995); *Velehradsky v. Velehradsky*, *supra*.

To support his argument, Kody cites to the Nebraska Supreme Court's decision in *Adrian v. Adrian*, *supra*. In that case, a father requested that the district court modify its decree of dissolution by transferring custody of two minor children from their mother to him. The mother, who was enrolled in a training program to become a registered nurse, sought and obtained a continuance of the initially scheduled hearing date on the ground that it conflicted with a class. A second continuance was obtained by the mother after new allegations by the father necessitated the appointment of a guardian ad litem. Six days before the rescheduled hearing, the mother's attorney made an oral motion to continue proceedings. On the day of the hearing, the mother's attorney submitted a written motion to continue and a supporting affidavit. The attorney explained that the mother had missed a class earlier in the year due to the unexpected death of a parent and that she had "no choice" but to make up class on the day of the hearing in order to complete her course. *Id.* at 56, 541 N.W.2d at 390. The court denied the motion on the grounds that it was untimely and that the mother had previously been given "several continuances." *Id.* at 57, 541 N.W.2d at 390. The hearing proceeded in the mother's absence; her attorney cross-examined witnesses at the trial and offered evidence on her behalf.

The trial court ultimately granted the father's requested modification of custody. On appeal to this court, the mother assigned the trial court's denial of her motion to continue as error, but we found no abuse of discretion. See *Adrian v. Adrian*, No. A-94-693, 1995 WL 49299 (Neb. App. Feb. 7, 1995) (not designated for permanent publication). However, after granting the mother's petition for further review, the Nebraska Supreme Court reversed this court's determination. Upon its de novo review of the record, it concluded that the trial court abused its discretion in denying the mother's motion to continue for three reasons. First, it determined that the mother had not been granted "several continuances," as stated by the trial court, but, rather, "only two continuances." *Adrian v. Adrian*, 249 Neb. at 57, 541 N.W.2d at 390. Second, the court noted the importance of the issue of child custody, stating "[t]he relationship between parent and child is constitutionally protected." *Id.* at 58, 541 N.W.2d at 391. Lastly, the court found that there was no indication from the record that the mother sought the continuance for a frivolous reason or a dilatory motive.

The first two *Adrian* factors weigh in favor of a continuance in this case. As to the first factor--the number of continuances granted to the moving party--the record shows that Kody had not requested any continuances prior to the day of the dissolution trial. Applying the second factor--the importance of the issues--this case, like *Adrian*, involved the constitutionally protected relationship between a parent and a child, a right of utmost importance.

While the first two *Adrian* factors may weigh in Kody's favor, in a previous case, we found the last factor--whether the continuance was being sought for a frivolous reason or a dilatory motive--to be particularly salient in a continuance analysis. See *State on behalf of Keegan M. v. Joshua M.*, *supra* (no abuse of discretion where district court denied mother's sole request to continue child custody hearing to obtain counsel because she had months to procure representation,

and continuance would have needlessly delayed trial). It can hardly be said that Kody's oral motion to continue was frivolous (i.e., having no basis in fact or law). Kody was in federal custody and his counsel explained that there were problems with the jail in setting up Kody's attendance at trial "via Zoom."

Whether Kody acted with a dilatory motive, however, is more nuanced. Although our continuance jurisprudence has not expressly defined what constitutes a "dilatory motive," the plain meaning of the phrase denotes an intent to cause delay or a lack of diligence by the moving party. On the one hand, a review of the record shows that Kody was rather active in the litigation below. On January 16, 2025, Kody filed a motion requesting that the district court set the matter for trial. His motion was granted on February 10, and a dissolution trial was scheduled for May 22. In the interim, Kody actively engaged in discovery, serving a subpoena duces tecum on Macie for a deposition to occur on February 28 and responding to Macie's interrogatories and requests for production on April 8. We also note that Kody filed a timely property statement on March 3, in compliance with a court order.

But at some point prior to trial, Kody was arrested and charged with federal crimes related to child pornography. Although the exact date of Kody's arrest and detention is not entirely clear, Macie testified at the dissolution trial that Kody had been in custody at the Saline County Jail for just over "three weeks." Therefore, Kody's arrest likely occurred towards the end of April 2025. On May 7, Kody filed a motion indicating that he had "recently been incarcerated" and requested that he be allowed to "appear and testify at trial via Zoom." The district court initially granted the motion on May 8. Nine days before trial was set to commence, the court vacated its prior order, stating Kody's "federal status" prevented him from participating at the hearing unless a "writ" was served on the jail. On the day of the dissolution trial, Kody did not appear, virtually or otherwise, and his counsel orally requested that trial be continued. He advised that "the writ was done" and had been "sign[ed]" by the court. However, counsel explained that the jail was "being somewhat difficult" because the writ was not served prior to "noon" on May 20. Counsel also intimated that the jail "did not have the staff" to allow Kody to participate virtually at the time of trial but believed he "had figured out a way around that." Counsel requested a "continuance until such time as [the] writ can be served on [the jail]." Macie objected to the continuance, and the court denied the oral motion without elaboration.

The statements of Kody's trial counsel are somewhat vague. It is unclear if the required writ was served on the jail (albeit untimely) or if service had yet to be perfected. Under the unique facts presented by this case, a written application and a supporting affidavit detailing the actions taken to secure Kody's appearance at trial, as required by § 25-1488, would have been helpful to both the district court and this court.

Regardless, upon our de novo review of the record, we cannot say the district court abused its discretion in denying Kody's oral request for a continuance. An abuse of discretion has been said to be a "highly deferential standard of review," and an appellate court's opinion "supplants the [trial] court's decision only in the instance where its decision was untenable." *Osantowski v. Osantowski*, 298 Neb. 339, 371, 904 N.W.2d 251, 274 (2017). We cannot say that the trial court's decision in this case was untenable, especially where Kody waited until the day of the dissolution trial to make his motion to continue. The record shows that Kody had notice that a writ was needed to secure his appearance at least 9 days before the scheduled proceedings. During these 9 days,

Kody gave no indication that a continuance was necessary. He instead waited until the day of the trial to make his request. These facts alone distinguish the current matter from *Adrian*. In that case, the mother made an oral motion to continue the custody hearing a week before the proceedings (which was denied). Since the mother had previously indicated her intention to seek a continuance, the Nebraska Supreme Court reasoned that “[i]t should have come as no surprise that a written motion for a continuance, supported by an affidavit, was filed on the day of the hearing.” *Adrian v. Adrian*, 249 Neb. at 59, 541 N.W.2d at 391.

Here, not only did Kody’s oral motion fail to comply with § 25-1488, the first indication given to Macie and the district court that he was seeking a continuance was moments before trial was set to begin. Kody’s decision to wait until the day of trial to request a continuance, despite a 9-day gap, evinces some lack of diligence. Trial counsel candidly admitted that “it was up to [him] to get the writ” to the jail on time, and he failed to do so. The record on appeal does not show when such writ was requested, obtained, or when (if at all) it was served on the jail. Without this information, it is difficult for us to ascertain whether Kody acted diligently in attempting to secure his appearance at trial, and our standard of review requires us to give deference to the trial court’s decision on such issues.

We also find the reasons articulated in support of Kody’s oral motion to continue to be unpersuasive. Kody’s trial counsel stated that a continuance was necessary because he needed Kody “available to assist [him].” However, counsel had been involved in this case since December 2024, actively engaged in discovery, and had several months to prepare for the issues raised by this case. Further, as for the important issue of protecting Kody’s parental interests, as we discuss later, due to Kody’s unknown federal custody status, even his presence at trial was unlikely to impact the district court’s decision regarding parenting time. Lastly, notwithstanding Kody’s absence from the dissolution trial, his counsel fully participated in the hearing, cross-examined Macie, and even offered documentary evidence on Kody’s behalf. For these reasons, we find no abuse of discretion by the district court in denying Kody’s oral motion to continue.

PROPERTY CLASSIFICATION

Kody next claims that the district court abused its discretion in awarding Macie “a portion of [his] premarital assets.” Brief for appellant at 3. He specifically argues that the court erred in classifying as marital property the proceeds received from the sale of the parties’ marital home and the funds in bank account #0088.

Under Nebraska’s dissolution statutes, “[t]he purpose of a property division is to distribute the marital assets equitably between the parties.” Neb. Rev. Stat. § 42-365 (Reissue 2016). The equitable division of property is a three-step process. The district court (1) classifies the parties’ property as marital or nonmarital, setting aside nonmarital property to the party who brought that property to the marriage; (2) values the marital assets and marital liabilities of the parties; and (3) calculates and divides the net marital estate between the parties in accordance with the principles contained in § 42-365. *Avery v. Whittle*, 34 Neb. App. 126, 33 N.W.3d 446 (2026). Kody’s argument primarily concerns the first step. The extent to which property is marital versus nonmarital presents a mixed issue of law and fact. *Id.* The manner and method of acquisition involve questions of fact, but the classification of the property under those facts is a legal question and not a matter of the court’s discretion. *Id.* All property accumulated and acquired by either

spouse during the marriage is part of the marital estate, unless it falls within an exception to this general rule. *Id.*

At the dissolution trial, Macie testified that Kody purchased the parties' marital home prior to their marriage for \$495,000. She indicated that Kody used "profit from the sale of [an] acreage" to make a downpayment of \$95,763.41 on the marital residence. That sum was paid from Kody's checking account #4395 on July 21, 2023. The parties were married in February 2024 and the home was sold in March 2025 for \$515,000. While Macie confirmed that the marital home was encumbered by a mortgage and that Kody made monthly payments before and after the marriage, no evidence was adduced showing the reduction in the balance of the mortgage from the time of marriage until the time of sale.

As to the proceeds from the marital home, the district court, relying on Macie's testimony, determined:

- Kody had purchased the marital home in July 2023 for \$492,000, applying a \$95,763 downpayment.
- The marital home was sold during the marriage for \$515,000, resulting "in a profit" of \$118,763 (\$515,000 sale price minus \$396,237 mortgage principal).
- After giving Kody credit for his \$95,763 downpayment, "there results a \$23,000 marital increase in value to the property," which was equally divided between the parties (\$11,500 each).

As for bank account #0088, very little information was offered. Macie testified that shortly before the dissolution trial, she discovered that Kody had opened that bank account on March 11, 2025; it had a balance of \$86,768.24 at that time. No evidence was offered to show the source of those funds. Macie requested that the district court award her half of the funds in the account if the court determined the funds were marital. The court found that the bank account had a balance of \$66,770.36 and that Kody failed to show that any portion of the account was nonmarital property. It then awarded each party half of the funds (\$33,385 each). The court ordered Kody to pay Macie "a property settlement payment in the amount of \$44,885" (\$11,500 in marital home proceeds + \$33,385 from the bank account).

Kody argues that his "participation in the trial was necessary to counter Macie's conjecture and 'piecing' together her claim" to one half the home's increased equity and one half of the balance in bank account #0088. Brief for appellant at 11. We disagree that Kody's participation was necessary for the district court to equitably decide these issues, as we explain next.

With regard to the increase in the value of the home during the course of the marriage, evidence could have been offered regardless of Kody's presence at trial. Macie testified that she had requested information and loan documents related to the marital home but that they were not provided. Macie was not contesting that Kody had a premarital interest in the home and Kody's production of relevant mortgage documentation could have at least established the mortgage balance at the time of marriage. Further, questioning of Macie could have shed more light on issues of active versus passive appreciation; however, there was no attempt to offer such evidence. See *Parde v. Parde*, 313 Neb. 779, 986 N.W.2d 504 (2023) (burden is on owning spouse to prove extent to which marital contributions did not cause appreciation).

Regarding bank account #0088, Macie testified that this account was not disclosed on Kody's property statement and that she was only recently provided documentation of the same.

Clearly, the late disclosure of this bank account prevented sufficient discovery related to these funds. Further, to the extent the funds in this account could have been tied to nonmarital sources, no attempt was made to offer any documentation or other witness testimony to support such a claim. Although, if present, Kody could have testified that these funds came from a nonmarital source, the district court would not have been obligated to give it any weight, particularly given the late disclosure of the account. See *Burgardt v. Burgardt*, 304 Neb. 356, 934 N.W.2d 488 (2019) (nonmarital interest in property may be established by credible testimony; however, triers of fact have right to test credibility of witnesses by their self-interest and to weigh it against evidence or lack thereof and may give no weight to evidence when it is inherently improbable, unreasonable, self-contradictory, or inconsistent with facts or circumstances in evidence). As such, we cannot find any error with the district court’s decision to characterize this account as marital property.

Upon our de novo review of the record, we find no error in the district court’s classification of the disputed assets. As the court correctly noted in its decree, the burden was on Kody to prove that these assets were nonmarital, and he failed to satisfy his burden. See *Brozek v. Brozek*, 292 Neb. 681, 874 N.W.2d 17 (2016) (generally, all property accumulated and acquired by either spouse during marriage is part of marital estate; the burden of proof rests with party claiming that property is nonmarital). We also find no abuse of discretion in the court’s valuation and division of these contested assets.

PARENTING TIME

Kody’s last argument focuses on the district court’s failure to grant him any parenting time with his children. He claims that this determination was “not supported by the evidence and [was] clearly wrong as a matter of law.” Brief for appellant at 11.

The relevant propositions of law regarding parenting time are well established in Nebraska. In *Sulzle v. Sulzle*, 318 Neb. 194, 216, 14 N.W.3d 532, 550 (2024), the Nebraska Supreme Court reiterated:

The best interests of the children are the primary and paramount considerations in determining and modifying visitation rights. Parenting time relates to continuing and fostering the normal parental relationship of the noncustodial parent. Generally, a reasonable visitation schedule is one that provides a satisfactory basis for preserving and fostering a child’s relationship with the noncustodial parent.

Neb. Rev. Stat. § 43-2923(6) (Reissue 2016) also provides that in determining custody and parenting arrangements,

the court shall consider the best interests of the minor child, which shall include, but not be limited to, consideration of . . . :

- (a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;
- (b) The desires and wishes of the minor child, if of an age of comprehension but regardless of chronological age, when such desires and wishes are based on sound reasoning;
- (c) The general health, welfare, and social behavior of the minor child;
- (d) Credible evidence of abuse inflicted on any family or household member . . . ; and
- (e) Credible evidence of child abuse or neglect or domestic intimate partner abuse.

At the time of the dissolution trial, Kody was detained at the Saline County jail on federal charges related to child pornography; no criminal trial had been scheduled at that time. During cross-examination by Kody's counsel, Macie agreed that "the children would benefit from having two parents who love and see and parent them." Further, when asked if she objected to the children having weekly contact with Kody over "Facetime" or "Zoom," Macie responded in the negative. However, Macie did not know if the jail allowed for any virtual or telephonic contact, nor was there any evidence adduced showing whether the facility had any procedures in place governing such contact. Macie did not believe that Kody would be able to make decisions regarding the children's best interests during his pretrial detention or any future incarceration.

In its decree, the district court awarded sole legal and physical custody of the children to Macie, a determination that Kody does not contest on appeal. However, the court also found that "parenting time between the minor children and [Kody] should not be ordered" for two primary reasons. First, the court concluded that any parenting plan it may order would "lack specificity as to how [Kody] would comply." It noted that contact with Kody "is subject to both federal custody regulation[s] and the regulation[s] of any detention center" that he was housed in, and no evidence was offered to show how contact would be facilitated. Second, the court determined that contact "would not be in the best interests of the minor children." The court was particularly concerned about the Kody's arrest for "allegations of possession and distribution of child pornography" and cited a lack of evidence showing that the children had "a beneficial relationship with their father at this time."

In his brief, Kody primarily argues that district court's second determination--that the seriousness of the allegations against him justified suspending all contact with his children--is "contrary to law." Brief for appellant at 12. He directs us to *Casper v. Casper*, 198 Neb. 615, 619, 254 N.W.2d 407, 409 (1977), wherein the Nebraska Supreme Court stated, "The mere fact of incarceration is not a sufficient justification for the denial of the right of visitation even though the same may be effectively exercised only by visitation at the institution." But we do note that a court may prevent visitation between children and their incarcerated parent when there is evidence showing such contact would disturb or unsettle them, and thus, not be in their best interests. See *Nielsen v. Nielsen*, 217 Neb. 34, 348 N.W.2d 416 (1984) (no abuse of discretion where trial court ordered no visitation between children and incarcerated father who murdered children's maternal grandparents and expert witness opined that such contact would have adverse psychological impact; parent's rights are not absolute and must yield to best interests of child). See, also, *VanSkiver v. VanSkiver*, 303 Neb. 664, 930 N.W.2d 569 (2019) (no abuse of discretion in suspending father's parenting time).

We acknowledge that at the time of the dissolution trial, Kody had not yet been tried on his federal criminal charges. And although the allegations against him are serious, under the presumption of innocence, guilt is to be established by the State solely through the probative evidence introduced at trial and not founded on official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial. See *State v. Parker*, 276 Neb. 661, 757 N.W.2d 7 (2008), *modified on denial of rehearing on other grounds* 276 Neb. 965, 767 N.W.2d 68 (2009). While a parent's possession or distribution of child pornography would certainly be relevant in deciding whether to award parenting time, no evidence was offered by Macie to show that Kody had actually engaged in those crimes. Similarly, no evidence was offered to demonstrate that the

children would be adversely impacted by visiting Kody during his detention. In fact, as previously mentioned, Macie indicated that she had no objection to virtual or telephonic contact.

That said, the district court's decision rested on another independent basis: a general lack of evidence showing whether the facility at which Kody was housed allowed for virtual or telephonic contact and, if so, how such contact would be facilitated. Although Kody argues in his brief that parenting time could be had via "video chats, phone calls, emails or other forms of communication," brief for appellant at 12, no evidence was offered showing that this was possible under the jail's rules and procedures. Due to this lack of evidence, we agree with the trial court that any parenting plan imposed "would lack specificity as to how [Kody] could comply" or, for that matter, how Macie could facilitate such contact. In the absence of such evidence, we cannot say that it was an abuse of discretion for court not to afford Kody any parenting time with his children at this time.

Kody also argues that the language used in the decree may preclude him from seeking a modification order once his criminal proceedings are concluded. He claims that "if he remains incarcerated, there would be no material change in the circumstance[s] sufficient to revisit the issue, and he would be denied all visitation going forward based upon the rule of this case." *Id.*

While we can appreciate Kody's concern in this regard, we do not read the decree to preclude consideration of future changes in circumstances in Kody's situation and the potential modification of his parenting time. The final lines of the paragraph in the decree relating to parenting time state: "The location and duration of [Kody]'s ongoing detention are unknown. There is insufficient evidence to find that the children have a beneficial relationship with their father *at this time*." (Emphasis supplied). The foregoing language suggests that the uncertainty of Kody's criminal status made it impossible to fashion a sufficiently specific parenting time schedule at the time of trial. However, the district court left open the possibility that circumstances could change once Kody's criminal status is fully determined and more information is available regarding the best interests of the children with regard to parenting time with their father. See, *Turner v. Turner*, No. A-24-814, 2025 WL 3134350 (Neb. App. Nov. 10, 2025) (selected for posting to court website) (petition for further review denied Dec. 18, 2025) (parenting time with father at this time detrimental to best interests of children; however, such order did not preclude father from seeking contact with children through modification proceeding should circumstances change in future; right of parenting time is subject to continual review by court); *Cerra v. Cerra*, No. A-24-726, 2025 WL 2907390 (Neb. App. Oct. 14, 2025 (selected for posting to court website) (father's parenting time suspended, but recognizing father's circumstances and ability to parent may change in future).

We cannot say that the district court abused its discretion in finding that it was in the children's best interests at this time to order no parenting time with their father due to his evolving criminal case and federal custody.

CONCLUSION

For the reasons outlined above, we affirm the district court's July 9, 2025, marriage dissolution decree.

AFFIRMED.