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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1709**

In re the Marriage of:
Jessica Stinchfield Giebenhain, petitioner,
Respondent,

vs.

Michael Edwin Giebenhain,
Appellant.

**Filed November 13, 2018
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-FA-16-3012

Becky Toevs Rooney, Minneapolis, Minnesota; and

Edward F. Rooney, Minneapolis, Minnesota (for respondent)

Christopher Zewiske, Ormond & Zewiske, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Worke, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant-husband argues that the district court misconstrued the law with respect to need-based attorney fees and clearly erred by finding that respondent-wife lacked the means to pay her attorney fees. We affirm.

FACTS

In February 2016, respondent-wife Jessica Stinchfield Giebenhain petitioned for dissolution of her marriage to appellant-husband Michael Edwin Giebenhain. Following a bench trial, the district court found that wife held an RBC investment account worth \$35,798, which was “entirely the non-marital property of the wife.” After analyzing the marital estate, the district court determined that, because the difference in total cash assets between the parties was \$228,738, a cash equalizer payment from husband to wife of \$114,369 was appropriate.

In considering wife’s request for need-based attorney fees, the district court noted that “Minnesota courts must evaluate the need for fees not only through the lens of absolute need, but also differences in the abilities of the respective parties to pay their legal costs without depleting the assets they have been awarded.” The district court stated that although wife was awarded “some liquid assets in the form of a cash equalizer payment, a significant portion of that equalizer will necessarily be depleted when she purchases a new home.” The district court also noted that it had previously awarded wife \$20,000 in need-based attorney fees and that wife’s remaining payments toward attorney fees were funded by loans from her grandmother totaling \$20,000. The district court found that wife “d[id] not have the means to pay the attorney’s fees and costs incurred on her behalf” and awarded wife \$34,534 in need-based attorney fees. This appeal followed.

DECISION

Husband challenges the district court’s award of need-based attorney fees to wife. This court reviews a district court’s award of attorney fees for an abuse of discretion. *Gully*

v. Gully, 599 N.W.2d 814, 825 (Minn. 1999). The district court abuses its discretion if it makes findings unsupported by the evidence, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts in the record. *Johnson v. Johnson*, 902 N.W.2d 79, 84 (Minn. App. 2017). Under Minnesota law, the district court “shall award attorney fees . . . in an amount necessary to enable a party to carry on or contest the proceeding” if it finds:

- (1) that the fees are necessary for the good faith assertion of the party’s rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
- (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and
- (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2016).

Husband argues that the district court erred by considering “the differences in the abilities of the respective parties to pay their legal costs without depleting the assets they have been awarded.” In *Schultz v. Schultz*, this court considered whether the district court abused its discretion by denying a request for attorney fees. 383 N.W.2d 379, 382-83 (Minn. App. 1986). This court noted that the appellant incurred substantial attorney fees and that she would not have sufficient income or property to “provide for her needs.” *Id.* at 383. This court also noted that “[i]t [wa]s clear that [the appellant] would have to liquidate a substantial portion of her property award to pay the fees” and that the respondent’s income was substantially greater and that he was more able to pay the fees. *Id.* Based on *Schultz*, we conclude that the district court did not err by considering whether

a party can pay her attorney fees without depleting a substantial portion of her awarded assets.

Husband also argues that the district court erroneously found that wife lacked the means to pay her attorney fees. We review the district court's factual findings for clear error. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000).

Husband asserts that because wife held an investment account worth approximately \$36,000 and a 20% down-payment on a new home would cost approximately \$75,000, wife would have had sufficient assets, following the district court's division of marital property, to pay her attorney fees. Resolution of this argument hinges upon the meaning of "does not have the means to pay" in section 518.14, subdivision 1(3). The legislature has not defined this phrase, and the statute provides no formula by which to calculate whether a party has "the means to pay." *See* Minn. Stat. § 518.14, subd. 1(3).

Whether an individual has "the means to pay" her attorney fees depends on the facts of each case and that person's unique circumstances. It is the district court's role to consider those circumstances and reach a conclusion. Here, the district court made detailed findings of fact and considered wife's unique circumstances. In particular, the district court noted that wife needed to purchase a new house using the cash-equalizer award, the court had already directed husband to pay wife \$20,000 in need-based attorney fees, and that wife's remaining payments toward her attorney fees were funded by loans from her grandmother. Although wife held an RBC investment account worth approximately \$36,000, we cannot say that the district court clearly erred by finding that wife lacked the

means to pay her attorney fees or abused its discretion by awarding wife need-based attorney fees.

Affirmed.