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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1156**

In re the Marriage of:
Amanda Jo Briggs, petitioner,
Respondent,

vs.

Kent Stewart Mitchell Briggs,
Appellant.

**Filed October 26, 2020
Affirmed as modified
Slieter, Judge**

Hennepin County District Court
File No. 27-FA-17-3414

Ruta Johnsen, Nancy Zalusky Berg, Nancy Zalusky Berg, LLC, Minneapolis, Minnesota
(for respondent)

Beth Wiberg Barbosa, Gilbert Alden Barbosa, Edina, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Cochran, Judge; and Slieter,
Judge.

UNPUBLISHED OPINION

SLIETER, Judge

On appeal from judgment and decree following the parties' marriage-dissolution proceeding, appellant-husband Kent Stewart Mitchell Briggs challenges the district court's award of need-based and conduct-based attorney fees to respondent-wife Amanda Jo

Briggs. He argues that the award was excessive and that payment would require liquidation of nonmarital assets. Because the district court did not abuse its discretion in awarding the attorney fees, we affirm. However, we modify the award to eliminate duplicative fees.

FACTS

The parties were married in 2010 and wife filed a petition for dissolution of the marriage in 2017. As a part of her motion seeking temporary relief in 2017, wife requested \$15,000 in need-based attorney fees from husband “to continue to have representation in this dissolution.” In a written order following a hearing on the motion, the district court concluded that it was “appropriate to advance to [wife] the sum of \$15,000 in order to secure [wife’s] ongoing representation in this matter.” The district court continued, “whether the fees should be considered need-based, or should be considered an advance on the property settlement shall be determined in mediation or at trial, but these fees are reasonably necessary for [wife] to litigate this matter.” Husband paid these fees to wife.

As part of a four-day trial involving the marriage dissolution, the district court first held a one-day hearing in 2018 regarding the enforceability of the parties’ antenuptial agreement. The district court concluded that the antenuptial agreement was unenforceable and awarded wife need-based attorney fees of \$20,000 on the grounds that “the fees are necessary for [wife’s] assertion of her rights in the proceeding and [did] not contribute unnecessarily to the length and expense of the proceeding” and that “[husband] has the means to pay them. [Wife] DOES NOT have the means to pay them.” The district court continued, “the Court declines to address conduct-based attorneys’ fees at this time; although it may choose to do so at a later date” and concluded “[t]he Court defers a

conduct-based decision at present, because a need-based award is so clearly appropriate and will adequately resolve the issue.” Husband paid these fees to wife.

Following the three other days of trial, the district court noted in its judgment and decree that it had “already awarded [w]ife some need-based attorneys’ fees” and that any attorney fees issued in the order would be in addition to the previous awards.

In the section of the order titled “Conduct-Based Attorney Fees,” the district court found that the hearing on the enforceability of the antenuptial agreement was “largely unnecessary” because husband was aware of wife’s arguments prior to the hearing yet “testified (on almost every point) consistently with [wife] and her witnesses.” The district court concluded that husband “unreasonably contribute[d] to the length or expense of the proceeding” and awarded wife conduct-based attorney fees of \$24,525 for fees incurred related to the antenuptial hearing. The district court noted that “[t]his is the only conduct-based fees award that the Court will order.”

The district court also addressed need-based attorney fees, and awarded wife \$54,483.60 based on her financial needs and fees “related to and preparing for” the three days of trial following the antenuptial hearing. Wife’s counsel also asked for an additional \$14,309.50 in conduct-based fees related to the 2017 motion for temporary relief. The district court granted this request, although noted that it did not include this amount in its conduct-based fees award but “[would] include it as part of the need-based award.” Including the \$14,309.50 need-based fees related to the temporary relief motion, the district court awarded wife a total of \$68,793.10 in need-based attorney fees. Because the district

court also awarded wife an additional \$24,525 in conduct-based fees, wife’s total fee award was \$93,318.10.

Husband appeals.

DECISION

I

Appellate courts review a district court’s award of attorney fees for an abuse of discretion, *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999), and we “will rarely reverse” such a decision, *Rosenberg v. Rosenberg*, 379 N.W.2d 580, 587 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986).

In a marriage-dissolution action, a district court “shall” award need-based “attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding,” provided that:

- (1) 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) the party from whom fees, costs, and disbursements are sought has the means to pay them; and
- (3) the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2018). Conduct-based attorney fees may be awarded “against a party who unreasonably contributes to the length or expense of the proceeding.” *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007) (citing Minn. Stat. § 518.14, subd. 1). Such fees are appropriate when a party’s positions throughout the proceedings are “duplicitous and disingenuous and have had the effect of further . . . lengthening [the]

litigation, and increasing the expense of [the] proceedings.” *Redmond v. Redmond*, 594 N.W.2d 272, 276 (Minn. App. 1999). “[A] party moving for conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, has the burden to show that the conduct of the other party unreasonably contributed to the length or expense of the proceeding.” *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016).

A. Statutory Findings

Husband solely contests elements two and three of section 518.14. He argues that, in determining his ability to pay, the district court did not adequately review the assets and liabilities of the parties in light of their property settlement agreement. He further argues that, in determining that wife did not have the means to pay her attorney fees, the district court did not consider the allocation of the property settlement award between the parties which granted her a greater share of marital assets, wife’s monthly spousal maintenance award of \$3,000 per month for 36 months, and that wife has less expenses than him.

The district court addressed the statutory factors for need-based attorney fees in the judgment and decree by stating, “[o]n review of the parties’ property settlement, it is clear that Husband had the ability to pay the attorneys’ fees Wife incurred, and that [Wife] does not—particularly in light of the fact that she has no real retirement saving and the Court is imputing income to her at a time she is not working a meaningful number of hours.”

We deem these findings conclusory, and “[c]onclusory findings on the statutory factors do not adequately support a fee award.” *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001), *review denied* (Aug. 20, 2002). But, “a lack of specific findings on the statutory factors for a need-based fee award under Minn. Stat. § 518.14, subd. 1, is not fatal

to an award” if the order “reasonably implies that the district court considered the relevant factors” and if “the district court was familiar with the history of the case and had access to the parties’ financial records.” *Id.* (quotation omitted).

Our review of the record compels us to conclude that the district court was familiar with, and considered, the financial status of the parties related to their ability to pay, thus satisfying the statutory requirements needed to support an award of need-based attorney fees. The district court noted the disparity between the parties’ incomes and concluded that husband’s average monthly income between 2016 and 2018 was \$15,505, while wife earned “less than \$1,000 in 2017 and 2018” while claiming monthly living expenses of \$4,650. The district court concluded that wife earned a “nominal income” following the parties’ separation.

The record also reflects that the district court reviewed and accepted the parties’ stipulated property settlement agreement as part of the judgment and decree, which addressed, in part, husband’s interest in nonmarital property. Pursuant to this agreement, the district court concluded that husband had a nonmarital interest of \$255,171 in a Roth IRA account, and wife would receive an award of \$28,504 from this account. The judgment and decree also specified that husband had an ownership in an SEP IRA with a balance of \$165,298 at the date of valuation, with a nonmarital interest in this account of \$9,656, and that wife would receive \$71,328 from this account. In sum, we conclude the district court was familiar with, and considered, the financial status of husband and wife, and discern no abuse of the court’s discretion in its award of need-based attorney fees.

B. Nonmarital Property

Additionally, husband argues that the effect of the attorney fees award is that he will be forced to liquidate nonmarital assets to satisfy the payment and the district court did not make required findings pursuant to Minn. Stat. § 518.58, subd. 2 (2018) to support such an apportionment. This statute states “[i]f the court apportions property other than marital property, it shall make findings in support of the apportionment.” Minn. Stat. § 518.58, subd. 2.

We discern no error because, contrary to husband’s claim, the court did not apportion husband’s nonmarital property to wife, which would require findings pursuant to Minn. Stat. § 518.58, subd. 2. Instead, the district court considered husband’s nonmarital assets in its attorney fees determination and concluded that he had the means to pay the award. Such consideration is permitted pursuant to our court’s ruling in *Berenberg v. Berenberg*, 474 N.W.2d 843, 849 (Minn. App. 1991), *review denied* (Minn. Nov. 13, 1991) (concluding that district court did not abuse its discretion in considering nonmarital earning potential in its fee award).

For the foregoing reasons, we find no abuse of discretion in the district court’s bases for the fees award. We do conclude, however, that portions of the need-based and conduct-based attorney fees awarded in the judgment and decree are duplicative of attorney fees awarded in prior proceedings and should, therefore, be modified as explained below.

II

In its final judgment and decree, the district court awarded wife \$14,309.50 in need-based attorney fees related to the temporary relief proceeding in 2017. The district court

had already awarded \$15,000 in attorney fees to wife from this hearing and, as previously noted, declined to classify these fees as either need based or as a property-distribution advance.

The district court noted in its final judgment and decree that the only conduct-based fees awarded were related to the antenuptial hearing and the court made no reference to the \$15,000.00 fee award in the property allocation. This compels us to conclude that the \$15,000 attorney-fee award was need based, as was the additional \$14,309.50 awarded in the final judgment. Because these awards are duplicative, we subtract the \$14,309.50 in fees awarded from the total award of need-based attorney fees.

III

Following the hearing on the enforceability of the parties' antenuptial agreement and in its order on the enforceability of the antenuptial agreement, the district court awarded wife need-based attorney fees of \$20,000. The district court stated that it will defer a decision to award conduct-based fees "because a need-based award is so clearly appropriate and will adequately resolve the issue."

The district court, in its final judgment and decree, found that husband unreasonably contributed to the length or expense of the proceedings and therefore awarded \$24,525 as conduct-based fees pursuant to Minn. Stat. § 518.14, subd. 1. Both of these attorney fee awards involve the same hearing, the district court did not otherwise explain why two separate awards were appropriate for the same hearing, and the record is less than clear that wife generated the aggregate total of \$44,525 in attorney fees for that portion of the case. We are therefore compelled to conclude that the \$24,525 in conduct-based fees awarded in

the final judgment and decree are duplicative of the \$20,000 in need-based attorney fees previously awarded, which husband paid, following the antenuptial hearing. After subtracting the duplicative fees, \$4,525 in conduct-based fees are non-duplicative, and the total award of conduct-based fees shall be modified to reflect this amount.

Consequently, we conclude that, after subtracting \$14,309.50 in duplicative need-based fees and \$20,000 in duplicative conduct-based fees from the original award of \$93,318.10, the final modified judgment of attorney fees we affirm shall be \$59,008.60.

Affirmed as modified.