STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1854

Erin Elisabeth Dancour,
n/k/a Erin Elisabeth Meyers,
Appellant,

vs.

Elie E. Dancour,
Respondent.

Filed September 21, 2020
Affirmed in part, reversed in part, and remanded
Worke, Judge

Ramsey County District Court
File No. 62-FA-19-165

Joel M. Anderson, White Bear Lake, Minnesota (for appellant)

Samantha J. Gemberling, Wolf, Rohr, Gemberling & Allen, P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

WORKE, Judge

In this child-support dispute, appellant-mother argues that the district court abused its discretion by failing to (1) award her attorney fees; (2) establish respondent-father's

medical-expense obligation; and (3) order father to pay educational expenses. We affirm the district court's rulings on attorney fees and health-care expenses, but we reverse and remand for enforcement of father's obligation to share in educational expenses.

FACTS

Appellant Erin Elisabeth Dancour, n/k/a Erin Elisabeth Meyers (mother) and respondent Elie E. Dancour (father) met in medical school in New Orleans and married in 2011. The parties later moved to New York. Mother is from Minnesota; father considers New York to be his home. The parties' one child (the child) was born in February 2015. In 2017, the parties moved to Indiana for father's fellowship.

In December 2017, mother petitioned for dissolution of marriage. On March 1, 2018, a summary decree of dissolution of marriage (the decree) was filed in Indiana. The parties shared joint legal custody of the child. Mother was awarded primary physical custody, and father was awarded reasonable parenting time. Father was ordered to pay mother $18 per week in child support. Then, beginning May 1, 2019, and each year after, the parties were required to complete a "true-up" calculation to determine whether father owed child support. The true-up formula used the parties' incomes from the prior year, the number of overnights each party had with the child, and the amount each party paid in day-care costs and health-insurance premiums. Father then would submit a lump-sum payment to mother by May 15 of each year if he underpaid child support. This formula allowed for child support to be based on the parties' actual incomes because the weekly child-support amount from the true-up calculation would become the weekly child-support amount for

the next year. Mother was responsible for maintaining health insurance for the child, and the parties agreed to share educational and agreed-upon extraordinary expenses.

In May 2018, mother and the child moved to Minnesota. Mother petitioned to transfer jurisdiction of registration of the decree to Minnesota. On February 25, 2019, the decree was confirmed. On February 26, 2019, mother moved for an order to show cause for father's failure to pay child support. On March 11, 2019, mother moved to find father in contempt for failing to pay child support, claiming that he owed $936.

In April 2019, father moved to deny mother's motions, asserting that his child-support obligation was not due until the true-up upcoming in May 2019. Father admitted that he had not paid mother child support, but he claimed that the parties agreed that he did not have to pay weekly child support if he did not protest mother's move to Minnesota. Despite this agreement, however, father stated that he would pay mother what he owed.

Following a hearing, the referee filed an order finding that the parties agreed to continue the contempt motion and participate in mediation. The referee also found that the parties agreed to proceed with the May 2019 true-up, but going forward, child support would be established under the Minnesota child-support guidelines. At mediation on May 27, 2019, the parties were unable to reach any agreements, but father paid mother $1,000.

Thereafter, the parties submitted their true-up calculations. Based on father's true-up submission, he owed mother $37,940 in child support. Father disputed expenses in mother's true-up submission, such as those related to an au pair, preschool, and museum and zoo memberships.

At a June 27, 2019 evidentiary hearing on mother's contempt motion, father tendered mother a check for $37,940. The referee determined that father should not be held in contempt because he was in substantial compliance.

On September 20, 2019, the referee filed an order. Based on the true-up formula, the referee determined that father, after the payment he submitted, owed mother an additional $5,085. The referee determined father's new child-support obligation under the Minnesota child-support guidelines, but reserved ruling on father's medical-expense obligation because mother had not supplied current health-insurance costs for the child.

In addressing father's challenges to mother's true-up submission, the referee found it reasonable that mother hired an au pair and that father did not deny his involvement in the hiring process. The referee determined that father provided no documentation that he objected to the child being enrolled in preschool for the 2019-20 school year and ordered him to contribute to those costs. But because mother failed to provide documentation related to her enrollment of the child for the 2018-19 school year, the referee concluded that "[a]bsent an agreement . . . the [c]ourt is unwilling to require that father pay for preschool prior to June 2019." The referee denied in part mother's requests for reimbursement for extraordinary expenses and denied her request for attorney fees. After mother's request for reconsideration was denied pursuant to Minn. R. Gen. Prac. 115.11, this appeal followed.

D E C I S I O N

Attorney fees

Mother first argues that it was an abuse of discretion to deny her request for attorney fees. Mother claims that she is entitled to attorney fees based on her contempt motion and the decree; thus, mother seeks conduct-based and contractual attorney fees. "The standard of review for an appellate court examining an award [or denial] of attorney fees is whether the district court abused its discretion." *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

Conduct-based attorney fees may be imposed "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2018). Conduct-based attorney fees are warranted when a party's behavior throughout litigation has been "duplicitous and disingenuous" to the extent of increasing the time and expense of the proceeding. *Redmond v. Redmond*, 594 N.W.2d 272, 276 (Minn. App. 1999). The requesting party bears the burden of establishing that the other party's conduct unreasonably contributed to the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001).

Here, the referee denied mother's request for over $27,000 in attorney fees, concluding that father did not unreasonably contribute to the length or expense of the proceeding. We agree.

Mother failed to satisfy her burden to show that father unreasonably contributed to the length or expense of the proceeding. First, father asserted that he did not pay weekly child support, relying on an agreement he reached with mother regarding her desire to relocate. The parties' decree states that it is in the child's best interests that the parties live

"in close proximity to one another." Yet mother decided to relocate to Minnesota with the child before father had completed his commitment to his fellowship in Indiana. Father claimed that because mother wanted to move, and he wanted to prevent her from moving, they agreed that she would move with the child and he would not have to pay weekly child support. Father claimed that he was not earning a substantial income during his fellowship, and he therefore needed the additional funds to visit the child. Mother did not contradict father's assertion that this was the parties' arrangement or that he reasonably believed that he did not owe mother weekly child support.

Further, the referee found that when mother filed her contempt motion in March 2019, father owed less than $1,000 in child support. Father then tendered $1,000 in May 2019 and raised genuine challenges to mother's true-up submission, which needed to be resolved. The record supports these findings. *See Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (stating that findings of fact will be sustained unless they are clearly erroneous). Father timely responded to mother's motions and submitted payment for his alleged child-support arrears. Thus, mother failed to show that father unreasonably contributed to the length or expense of the proceeding.

Mother also claims that she is entitled to attorney fees because it is provided for in the decree. This is a matter of contract interpretation, which is an issue reviewed de novo. *See Ertl v. Ertl*, 871 N.W.2d 410, 414 (Minn. App. 2015). The hold-harmless provision in the decree, upon which mother relies, relates to third-party actions. For example, this provision would require father to hold mother harmless for any fees he incurred, including attorney fees, in an action brought by a third party for his failure to pay an outstanding debt

that he agreed to pay and was incorporated into the decree. This provision does not reach attorney fees associated with mother seeking to collect child support. Based on this record, we see no abuse of discretion in the referee's denial of mother's request for attorney fees.

Medical-expense obligation

Mother next argues that the referee should not have reserved a determination on father's medical-expense obligation because the child-support guidelines require findings on basic support. Mother asserts that the parties agreed that the weekly medical-expense premiums were $128.56. But while finding this figure accurate for the true-up calculation, the referee stated: "Based on mother's failure to provide any information related to the child's current medical and dental insurance costs, the [c]ourt will reserve father's medical support obligation at this time."

A submission in the record that used an Indiana child-support calculator indicated that the child's weekly health-insurance premium was $128.56. But mother's insurance would have changed after she moved to Minnesota and undertook a position with a new employer. However, there is nothing in the record showing health-insurance costs after May 2019. *See Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("[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."), *review denied* (Minn. Nov. 25, 2003). Thus, the referee did not abuse its discretion in reserving a ruling on father's medical-expense obligation until it is presented with current information to calculate the obligation.

Educational expenses

Finally, mother argues that father should reimburse her for educational expenses. The referee determined that father was responsible for preschool expenses for the 2019-20 school year, but not the 2018-19 school year because mother did not provide documentation showing that father agreed to the child's enrollment for the 2018-19 school year. The referee was unwilling to require father to pay preschool expenses "[a]bsent an agreement, or documentation that mother did not unilaterally enroll the child." We disagree with the referee's determination, because, under the decree, educational expenses need not be approved by father.

Regarding educational expenses, the decree provides: "For preschool, primary and secondary education expenses, the parties shall share payment of tuition, private primary and/or secondary education expenses based upon their respective percentage shares of income . . . unless the parties agree otherwise, in writing." This provision requires the parties to share in the expense, unless they agree otherwise; it does not require the expense to be preapproved. If the parties had intended to have the expense preapproved, they could have included it in the decree as they did for extraordinary expenses. Under the extraordinary-expense provision, the parties are required to consult with each other in advance of enrollment; the education-expense provision does not include this requirement. Therefore, father was required to pay, and it was his burden to object rather than mother's burden to prove that father approved, the educational expenses. Accordingly, we reverse and remand for the district court to make a determination of the amount father owes mother

for the child's educational expenses, in doing so, the district court may exercise its discretion to reopen the record.

Affirmed in part, reversed in part, and remanded.