

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0465**

Mower County Health and Human Services,
Petitioner,

April Ann Rowe,
Appellant,

vs.

Michael Paul Osborn,
Respondent.

**Filed December 13, 2021
Affirmed
Bryan, Judge**

Mower County District Court
File No. 50-FA-18-1107

April A. Rowe, Albert Lea, Minnesota (pro se appellant)

Danielle L. DiFiore, Anderson Law Firm, Rochester, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Bryan, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal of an award of conduct-based attorney fees under Minnesota Statutes section 518.14, subdivision 1 (2020), appellant challenges the district court's decision for

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

the following two reasons: (1) the district court failed to satisfy statutory requirements by not considering respondent's ability to pay; and (2) the district court abused its discretion in awarding the fees. First, we conclude that the district court correctly applied the law because a court need not consider a party's ability to pay when awarding conduct-based fees. Second, we conclude that the district court did not abuse its discretion because the district court made specific findings regarding Rowe's impact on the cost of litigation.

FACTS

In June 2017, appellant April Ann Rowe and respondent Michael Paul Osborn became the parents of a minor child. The parties never married and ended their relationship prior to the child's birth. On April 16, 2020, following a bench trial, the district court awarded permanent sole legal and permanent sole physical custody of the child to Osborn. Within a week of the permanent custody order, the district court granted Osborn's ex parte motions, ordered supervised exchanges, and prohibited Rowe's out-of-state travel with the child. Since the April 2020 permanent custody order, Rowe has filed motions for a new trial, to change venue after the district court denied the new trial motion, and to remove the assigned judge.

In December 2020, Osborn moved for an award of attorney fees based on Rowe's litigation conduct. Osborn incurred attorney fees from September 2020 to December 2020, totaling \$5,653.40. On April 2, 2021, the district court awarded Osborn \$1,000, concluding that Rowe's actions unreasonably contributed to the length and expense of the related proceedings for the following reasons: several hearings were based on Rowe's false allegations or baseless requests; Rowe challenged virtually every decision made by the

district court; Rowe filed pleadings in another county in an attempt to undermine the district court's decision; Rowe used the legal system to interfere with Osborn's parenting time and custodial rights; Osborn had to file numerous ex parte motions due to Rowe's conduct; and Rowe's requests for hearings were "relentless." Rowe appeals.

DECISION

Rowe first argues that the district court erred as a matter of law when it failed to consider her ability to pay the \$1,000 award. In addition, Rowe argues that the district court abused its discretion because the conduct at issue did not sufficiently contribute to the length and expense of the proceedings. We affirm the district court's decision because the district court properly applied the law and did not abuse its discretion.

Minnesota Statutes section 518.14, subdivision 1, addresses two grounds upon which a district court may award attorney fees: need-based and conduct-based. To award need-based fees, the district court must consider a party's ability to pay. Minn. Stat. § 518.14, subd. 1. However, to award conduct-based fees, as in this case, the district court need not consider a party's ability to pay: "[A]n award of conduct-based fees . . . may be made regardless of the recipient's need for fees and regardless of the payor's ability to contribute to a fee award." *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001); *see also Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991) (noting that conduct-based attorney fees may be "based on the impact a party's behavior has had on the costs of the litigation regardless of the relative financial resources of the parties"). Instead, an award of conduct-based fees requires a finding that the nonmoving party's conduct unreasonably contributed to the length or expense of the proceeding. Minn. Stat.

§ 518.14, subd. 1. The moving party bears the burden of establishing the unreasonableness of the other party's behavior, *Geske*, 624 N.W.2d at 818, and the district court must support the award with specific findings regarding the behavior justifying the award, *Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992).

We apply a de novo standard of review to questions of law, such as the construction and application of the statute governing attorney fee awards. *Sanvick v. Sanvick*, 850 N.W.2d 732, 737 (Minn. App. 2014) (citing *In re Estate of Holmberg*, 823 N.W.2d 875, 876 (Minn. App. 2012)). We review for abuse of discretion the district court's ultimate decision to grant or deny a request for attorney fees. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). A district court abuses its discretion if it acts against logic or the undisputed facts in the record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

We are not convinced by Rowe's first argument because the argument contravenes well-established law. Contrary to Rowe's argument, the district court is not required to consider a party's ability to pay when deciding a motion for conduct-based attorney fees. Rowe's second argument is also unavailing. Although Rowe argues that her conduct was reasonable, Rowe does not dispute any of the following factual determinations made by the district court: several hearings were based on Rowe's false allegations or baseless requests; Rowe challenged virtually every decision made by the district court; Rowe filed pleadings in another county in an attempt to undermine the district court's decision; Rowe used the legal system to interfere with Osborn's parenting time and custodial rights; Osborn had to file numerous ex parte motions due to Rowe's conduct; and Rowe's requests for hearings were "relentless." Based on those uncontested determinations, we conclude that

the district court did not abuse its discretion because an award of \$1,000 in conduct-based attorney fees is not against logic or the record.

Affirmed.