This opinion is nonprecedential except as provided by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
A21-0921

S. A., petitioner,
Appellant,

vs.

L. H.,
Respondent.

Filed June 6, 2022
Affirmed in part and reversed in part
Reyes, Judge

Todd County District Court
File No. 77-FA-19-53

Jonathan D. Wolf, Rinke Noonan, Ltd., St. Cloud, Minnesota (for appellant)

Mary Pat Byrn, Viitala Law Office, Minneapolis, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Klaphake, Judge.[*]

NONPRECEDENTIAL OPINION

REYES, Judge

In this child-support dispute, appellant argues that the district court erred by (1) awarding retroactive child support below the presumptively appropriate child-support amount; (2) improperly setting the effective date of her past-support award; and

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

(3) awarding respondent attorney fees. By notice of related appeal, respondent cross-appellant argues that the district court erred by awarding appellant retroactive child support. Because the district court did not err by awarding respondent conduct-based attorney fees, we affirm in part. But because the district court lacked a statutory basis to award appellant retroactive child support, we reverse in part.

FACTS

Appellant, S.A., and respondent, L.H., are the parents of one minor child, born in 2004 in Oklahoma. S.A. gave birth to the same-sex couple's child via invitro-fertilization. Because of the lack of legal rights for same-sex couples, L.H. had no legally recognized parental rights. Sometime later, S.A. and L.H. ended their relationship.

S.A. moved to Minnesota with child in 2010. L.H. remained in Oklahoma and the parties entered an out-of-court agreement under which L.H. would pay S.A. $350 per month for child's support. Two years later, L.H. moved to Minnesota to be closer to child. She regularly saw child and continued to give S.A. $350 every month until she lost her job and fell behind on payments to S.A. Eventually, L.H. stopped making payments altogether.

On October 4, 2016, S.A. sued L.H. in a civil action in district court for breach of contract based on L.H.'s failure to make the $350-per-month payments. S.A. later amended her complaint to add a parentage claim against L.H. The district court adjudicated L.H. as child's legal parent in its July 12, 2018 written order. It also referred the child-support matter to an expedited process to determine child support, including past child support going back to October 4, 2014, which is two years before the filing of S.A.'s civil

action. Finally, it notified L.H. that she could move for parenting time and custody in family court.

S.A. did not proceed to the expedited process. L.H. tried to appeal the district court order. This court, noting that the appeal was taken from a parentage determination that failed to adjudicate all of the claims necessary to resolve a parentage proceeding, dismissed the appeal as taken from a nonfinal ruling. S.A. then moved the district court to enter a final judgment. The district court entered a final judgment consistent with its previous order, dismissed S.A.'s claims, and denied S.A.'s claim for damages.

On January 16, 2019, S.A. filed a new action seeking child support from L.H. L.H. counter-sued S.A. for custody and parenting time. In April 2019, the parties agreed to a temporary parenting plan. They also decided that L.H. would pay S.A. $1,112 per month for temporary child support starting in May. In June 2020, the parties stipulated to all issues except retroactive child support and attorney fees.

Following a trial on the unresolved issues, the district court determined that it had the authority under Minn. Stat. § 257.66, subd. 4 (2020), and Minn. Stat. § 256.87, subd. 5 (2020), to order child support dating back two years before the start of the 2019 child-support action. It ordered L.H. to pay S.A. $16,308 in retroactive child support, which the district court calculated as follows: $350 per month for February 2017 to July 2018, and $1,112 per month for August 2018 to April 2019. The district court also awarded L.H. $4,775 in conduct-based attorney fees. S.A. appeals, and L.H. filed a notice of related appeal.

DECISION

I. The district court abused its discretion by awarding S.A. retroactive child support because the cited statutes do not authorize that award.

S.A. argues that the district court misidentified the two-year look-back period for her past-support award and, as a result, understated that award. By cross-appeal, L.H. asserts that the district court did not have the statutory authority to award S.A. past child support. We agree with L.H.

Generally, the district court has broad discretion to provide for the support of the parties' child. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). Determinations of past child support due are reviewed for an abuse of discretion. *LaChapelle v. Mitten*, 607 N.W.2d 151, 166 (Minn. App. 2000), *rev. denied* (Minn. May 16, 2000). A district court abuses its discretion "by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is 'against logic and the facts on record.'" *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quoting *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997)).

A. The district court lacked a sufficient basis under section 257.66, subdivision 4, to grant S.A. retroactive child support.

L.H. argues that the district court lacked authority under section 257.66 to award S.A. past support because that statute only applies to district court orders in actions establishing parentage. We agree.

Section 257.66 is part of the Minnesota Parentage Act (MPA), Minn. Stat. §§ 257.51-.74 (2020), which governs proceedings establishing parentage. Under the MPA, when a district court determines whether an individual is a child's legal parent, the district

court order must also address other parent-child obligations, such as child support. *See* Minn. Stat. § 257.66, subd. 3 (requiring parentage judgment to address, among other issues, child support). The district court also has the discretion to order a past-support award but must limit the amount of past support "to the proportion of the expenses that the [district] court deems just, which were incurred in the two years immediately preceding the commencement of the action." *Id.*, subd. 4.

Here, S.A. initially commenced a civil action against L.H. in 2016. But S.A. then amended the complaint to add a parentage claim which, given the district court's subsequent adjudication of parentage and reference of the support question to the expedited support process, effectively converted the civil action into a parentage action under the MPA. Indeed, in the prior appeal to this court in that action, this court stated that the prior action was a parentage action, and treated it as a parentage action. Therefore, it must continue to treat it as a parentage action now. *See* Minn. R. Civ. App. P. 140.01 (establishing that there is no rehearing in this court). As a result, child support, including any two-year-past-support award, needed to be addressed in that action.

The district court order in that action established L.H.'s parentage. But S.A. did not request a two-year-past-support award. In addition, the district court did not grant S.A. a past-support award, nor did it reserve the issue. Instead, the district court order referred the matter of support to the expedited process. For unknown reasons, S.A. did not pursue child support, including a request for past child support, through the expedited process as the district court had directed her to do. As a result, the question of support was never presented to a child support magistrate as a part of that proceeding. Rather, in 2019, S.A.

brought a new, separate action against L.H. for child support and also requested past support in that separate action. But the MPA only grants a district court the authority to order a past-support award as part of a *parentage proceeding*. *See* Minn. Stat. § 257.66, subd. 3 (requiring parentage judgment to address child support). It does not give the district court authority to order past support in a separate action filed after the fact. *See id*. ("The remaining matters and all subsequent motions related to them shall proceed and be determined in accordance with chapters 518 and 518A."). Because the district court in the 2016 action establishing L.H.'s parentage did not reserve the issue of past support, and because S.A. did not follow its directive to proceed to the expedited process on the support issue, the child-support action here is separate from that action. We therefore conclude that, under the particular facts of this case, the district court, in this separate action, lacked authority under section 257.66 to award S.A. past support.

B. The district court lacked a sufficient basis under section 256.87, subdivision 5, to grant S.A. retroactive child support.

L.H. argues that S.A. is not entitled to a past-support award under section 256.87. We again agree.

Section 256.87, subdivision 5, provides that a "person or entity" with physical custody of a child not receiving assistance may sue for "child support payments . . . from the noncustodial parent under chapter 518A." In addition, the noncustodial parent "may [be liable] up to the two years immediately preceding the commencement of the action." *Id.* However, it also states that "This subdivision applies only if the person or entity has physical custody with the consent of a custodial parent or approval of the court." *Id.*

Here, there was no custody order. So, while S.A. had custody, she had custody with neither the consent of the custodial parent nor the approval of the court. We therefore conclude that the district court lacked authority under section 256.87 to award S.A. retroactive child support.

II. The district court did not abuse its discretion by awarding L.H. conduct-based attorney fees.

S.A. argues that the district court abused its discretion by awarding L.H. attorney fees because the district court did not identify the source of its authority. We are not persuaded.

In a proceeding under chapter 518 or chapter 518A, a district court may award conduct-based attorney fees against a party "who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2020). Conduct-based attorney-fee awards "are discretionary with the district court." *Szarzynski v. Szaryznski*, 732 N.W.2d 285, 295 (Minn. App. 2007); *see also Schallinger v. Schallinger*, 699 N.W.2d 15, 24 (Minn. App. 2005) ("An award of attorney fees . . . rests almost entirely within the discretion of the [district] court and will not be disturbed absent a clear abuse of discretion."), *rev. denied* (Minn. Sept. 28, 2005).

The district court here awarded L.H. $4,775 in attorney fees based on S.A.'s conduct which it found contributed to the length and costs of the proceeding. While the district court should have identified the basis for the award, the record reflects that the parties knew that L.H. sought conduct-based fees under section 518.14. *Cf. Geske v. Marcolina*, 624 N.W.2d 813, 816-17 (Minn. App. 2001) (noting that district court did not identify authority

for its award of attorney fees but apparently inferring from that award that it was made under Minn. Stat. § 518.14, subd. 1 (2000)). And the district court cited specific conduct by S.A. that led to unnecessary costs. Because ample evidence in the record supports the district court's determination that S.A.'s conduct continuously delayed the proceeding and contributed to litigation costs, we discern no abuse of discretion by the district court.

Affirmed in part and reversed in part.