

*This opinion is nonprecedential except as provided by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
A22-1446**

In re the Marriage of:

Richard Kurtis Traugott, petitioner,
Appellant,

vs.

Sherry Louise Traugott,
Respondent.

**Filed May 30, 2023
Affirmed
Cochran, Judge**

Benton County District Court
File No. 05-FA-15-1400

Richard Traugott, Foley, Minnesota (pro se appellant)

April Anne Lindstrom, Lindstrom Family Law, Milaca, Minnesota (for respondent)

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this parenting dispute, appellant-father challenges an order awarding respondent-mother costs and attorney's fees as sanctions for father's bad-faith motion to find mother in civil contempt of court. Because the district court did not abuse its discretion by awarding costs and attorney's fees as sanctions against father, we affirm.

FACTS

Appellant Richard Traugott (father) and respondent Sherry Traugott (mother) married in 1995, separated in 2015, and divorced in 2017. They are the parents of three children born in 1998, 2005, and 2010. At the time of the divorce, the oldest child was an adult. Since the divorce, father and mother have shared legal custody of their two younger children, while mother has had sole physical custody. Father and mother have continued to litigate parenting time, child support, and other issues. Both parties have filed multiple civil contempt motions.

Relevant to this appeal, the district court ordered a temporary modification of the parties' parenting-time schedule in November 2020. Specifically, the district court limited father's parenting time with the two minor children based on the district court's finding that it was "in the children's best interest that parenting time with their father be limited and supervised" until the relationship between the children and father was repaired through therapy. The district court ordered the parties to complete a coparenting course, attend individual therapy with a coparenting specialist, and sign releases allowing their therapists and the children's therapists to receive information from the other parent. The district court also ordered father to engage in family therapy with the minor children "[w]hen recommended as appropriate by his individual therapist, [and] after consultation with the children's therapist."

In March 2021, father filed a motion to find mother in civil contempt of court, alleging that mother had violated the district court's November 2020 order by failing to begin individual therapy, failing to provide a release of information, and refusing to allow

the minor children to attend family therapy. Mother opposed the motion and asked the district court to order father to reimburse her for the costs and attorney's fees she had incurred by responding to father's contempt motion. Mother also asked the district court to impose "additional sanctions" against father for his "frivolous filing."

In May 2021, the district court held a hearing on the motion. At the hearing, mother asserted that she *had* started individual therapy with a coparenting specialist, provided the necessary information to father, and otherwise followed the district court's order. She explained her understanding that the district court required the parties and the children to first engage in individual therapy and then begin family therapy with a coparenting specialist only "after all of the therapists consult with one another and agree that the children are ready." The district court confirmed that its "vision for moving forward was that family therapy would not take place until the children's therapists and [father's] therapist agreed that it's appropriate." Mother again requested sanctions against father, arguing that sanctions were necessary to deter him from continuing to file contempt motions.

The district court denied father's motion in a May 2021 order. The district court concluded that there was insufficient evidence to support a finding of contempt because there was no direct evidence that mother had failed to comply with the November 2020 order. In its order, the district court also stated that mother could "file an affidavit for costs and fees for the [c]ourt's consideration." Mother's attorney filed an affidavit seeking financial sanctions against father in the amount of \$1,796 in costs and attorney's fees resulting from father's contempt motion.

In June 2021, the district court filed an order granting mother’s request. The district court found that father “lacked a good-faith basis to assert that [mother] had intentionally failed to comply with the provisions of the [c]ourt’s [November 2020] order” and that “[father’s] claims of contempt were frivolous and intended to harass or needlessly increase the cost of litigation.” The district court therefore concluded that an award of costs and attorney’s fees to mother was appropriate pursuant to Minn. Stat. § 549.211 (2022) and ordered father to pay mother or her counsel \$1,796.

In July 2021, father filed a notice of appeal. Father included copies of both the May 2021 and June 2021 orders with the notice of appeal. This court construed the appeal as being taken from both orders but determined that father’s appeal of the June 2021 order awarding costs and attorney’s fees was premature because judgment had not yet been entered on the June 2021 order. Consequently, we dismissed that part of the appeal but allowed father’s appeal of the May 2021 order denying father’s contempt motion to proceed. The record shows that judgment was eventually entered on the award of costs and attorney’s fees on September 30, 2022.

Before judgment was entered on the award of costs and attorney’s fees, this court affirmed the district court’s denial of father’s contempt motion. *Traugott v. Traugott*, No. A21-0912, 2022 WL 351115, at *1 (Minn. App. Feb. 7, 2022). We explained that, “[w]ithout a finding of fact that [mother] violated the court’s order, there was no basis for the district court to invoke its discretionary powers to hold [mother] in contempt of court.” *Id.* at *2. We further explained that, although father may still dispute mother’s testimony that mother is complying with the district court’s November 2020 order, “the district court

made a finding to the contrary on this point, and . . . there is reasonable evidence in the record to support that finding.” *Id.* We therefore determined that the district court’s factual finding was not clearly erroneous and that the district court did not abuse its discretion in denying father’s contempt motion. *Id.*

In October 2022, father filed an additional notice of appeal, which we construed as taken from the district court’s September 30, 2022 judgment against father for \$1,796. Father subsequently filed an informal brief. Mother submitted a late brief without filing a motion to accept a late brief. We therefore consider the matter on the merits pursuant to Minn. R. Civ. App. P. 142.03, which provides that a case shall proceed on the merits if a respondent fails to file a brief.

DECISION

Father challenges the district court’s imposition of sanctions against him in the amount of the costs and attorney’s fees that mother incurred as a result of father’s contempt motion. The district court ordered father to pay mother’s costs and attorney’s fees pursuant to Minn. Stat. § 549.211, which provides the manner and procedure by which parties can seek sanctions in civil actions. This statutory scheme overlaps with Minn. R. Civ. P. 11. *See Johnson ex rel. Johnson v. Johnson*, 726 N.W.2d 516, 518-19 (Minn. App. 2007) (describing the standards and procedure under both schemes).

We review a district court’s award of costs and attorney’s fees, including sanctions awarded pursuant to Minn. Stat. § 549.211, for an abuse of discretion. *Id.* at 518; *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 145 (Minn. App. 2011), *rev. denied* (Minn. Mar. 15, 2011). “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.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

Under Minn. Stat. § 549.211, a district court may impose sanctions upon a party who signs, files, submits, or later advocates a written motion that is “presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” Minn. Stat. § 549.211, subs. 2(1), 3. A district court may also impose sanctions on a party who files a motion that is not based on a reasonable belief that “the allegations and other factual contentions have evidentiary support.” *Id.*, subs. 2(3), 3. “[Such] conduct is measured by an objective standard,” and “[s]anctions are not appropriate merely because a party does not prevail on the merits.” *Radloff v. First Am. Nat’l Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 157 (Minn. App. 1991) (explaining these standards as applied to both rule 11 and an earlier version of the statute), *rev. denied* (Minn. July 24, 1991). In addition, “[t]he purpose of sanctions is deterrence rather than punishment or cost-shifting.” *Wolf v. Oestreich*, 956 N.W.2d 248, 256 (Minn. App. 2021), *rev. denied* (Minn. May 18, 2021).

Here, the district court found that father “lacked a good-faith basis to assert that [mother] had intentionally failed to comply with the provisions of the [c]ourt’s order” because he moved to find mother in contempt “without a good-faith basis to believe that [she] had not engaged in counseling, had prohibited the children from engaging in counseling, or that she [had] obstructed family counseling, which was attempted by [father] without soliciting input from the children’s counselors as required.” The district court

further found that father’s claims “were frivolous and intended to harass or needlessly increase the cost of litigation.” The district court therefore concluded that awarding costs and attorney’s fees to mother was appropriate pursuant to Minn. Stat. § 549.211, noting that the sanctions imposed—a total of \$1,796—were “limited to what is sufficient to deter repetition of the conduct of the petitioner.”

Father argues that he filed the contempt motion in good faith and that it was not a frivolous filing or an attempt to harass. He also appears to argue that the contempt motion was necessary to clarify aspects of the district court’s previous order and to keep the parties moving toward the goal of family reunification counseling for father and the children. Father repeats the assertions he made in district court to support the contempt motion, including that mother has not started counseling with a therapist specializing in coparenting conflict, provided necessary information to father’s therapist, or allowed the children to attend family counseling with father. And he insists that the contempt motion was his “only recourse” for ensuring that mother followed the district court’s order. Father’s arguments are unavailing.

The district court properly identified the applicable legal standard and a sufficient basis to support its decision. The record supports the district court’s determination that sanctions are appropriate because father filed his motion “without a good-faith basis to believe that” mother was in contempt of the district court’s November 2020 order. As we explained in our prior decision affirming the district court’s denial of father’s contempt motion, “there is reasonable evidence in the record to support” the district court’s finding that mother had *not* failed to comply with the November 2020 order—namely, mother’s

testimony to that effect. *Traugott*, 2022 WL 351115, at *2. And we may not reweigh the evidence on appeal when reviewing a factual finding for clear error. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021). The record therefore supports the district court’s determination that father had no good-faith basis for his contempt motion and that it was an objectively frivolous filing.

We are not persuaded otherwise by father’s assertion that he filed the contempt motion in good faith. “[Such] conduct is measured by an objective standard,” not a subjective one. *Radloff*, 470 N.W.2d at 157. In addition to the reasoning above, father’s apparent contention that the contempt motion was necessary to clarify aspects of the district court’s order, and that he filed the motion to “protect his daughters from the manipulative tactics that [mother] has used,” further suggests that he did not file the motion for a proper purpose but rather to harass or inconvenience mother. We also note that the sanctions imposed by the district court are for a relatively modest amount, consistent with deterrence rather than punishment. *See Wolf*, 956 N.W.2d at 256.

For the above reasons, we conclude that the district court did not abuse its discretion by imposing sanctions on father under Minn. Stat. § 549.211 in the amount of the costs and attorney’s fees that mother incurred as a result of father’s contempt motion and by entering judgment against him accordingly.

Affirmed.