STATE OF MINNESOTA
IN COURT OF APPEALS
A10-930
A10-1777

In re the Marriage of:
James Richard Huntsman, petitioner,
Appellant,

vs.

Zenith Annette Huntsman,
Respondent.

Filed May 31, 2011
Affirmed in part, reversed in part, and remanded
Toussaint, Judge

Washington County District Court
File No. 82-F7-98-002231

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Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Toussaint, Judge.

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

TOUSSAINT, Judge

In these consolidated dissolution appeals, appellant-husband James Richard Huntsman argues that the district court (1) should have granted his motion to modify his

spousal maintenance obligation and abused its discretion by awarding respondent-wife Zenith Annette Huntsman an excessive amount of maintenance arrears; (2) should have terminated his obligation to pay respondent's health insurance; (3) should not have reopened the property division to re-divide his retirement account; (4) erred in limiting his ability to file future motions; and (5) should not have awarded respondent attorney fees. We affirm in part, reverse in part, and remand.

D E C I S I O N

I.

Appellant challenges the denial of his motion to modify his spousal maintenance obligation. A party moving to modify maintenance must show that substantially changed circumstances render the existing award unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2(a) (2010). Whether to modify maintenance is discretionary with the district court, and its decision will not be reversed absent a clear abuse of that discretion. *Kemp v. Kemp*, 608 N.W.2d 916, 921 (Minn. App. 2000). A district court abuses its discretion if its decision is based on findings of fact that are unsupported by the record, it misapplies the law, or it resolves the question in a manner contrary to logic and the facts on the record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997) (findings unsupported by the record; misapplying the law); *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1994) (resolving the matter in a manner contrary to logic and facts on record). Findings of fact are not set aside unless clearly erroneous. Minn. R. Civ. P. 52.01. Clearly erroneous means "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Tonka Tours, Inc. v. Chadima*, 372

N.W.2d 723, 726 (Minn. 1985); *McConnell v. McConnell*, 710 N.W.2d 583, 585 (Minn. App. 2006) (quoting this facet of *Tonka Tours* in a maintenance appeal).

A. *Job Title*

Based on findings describing appellant's job with a law firm as a "paralegal specialist" or "paralegal," the district court found that "most of [appellant's] loss of income is due to his chronic, voluntary underemployment over a number of years" and that he has been "intentionally underemployed since 2002." Appellant argues that he was never a paralegal but rather worked at a law firm as a patent agent, similar to his prior job and hence he was not underemployed.[1] The critical question, however, is not whether the district court correctly identified appellant's job title, but whether the record supports the finding that he was voluntarily underemployed while working at the law firm.

To argue that he was not voluntarily underemployed at the law firm, appellant cites the Heitzman report, which he submitted to the district court in 2007. It states that his then

[1] Citing *Ploog v. Oglivie*, 309 N.W.2d 49, 53 (Minn. 1981) and *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997), appellant asserts that because the evidence regarding his employment is documentary, this court can disregard the district court's finding that he was a paralegal and find him to be a patent agent. Appellant is incorrect. In 1985, Minn. R. Civ. P. 52.01 was amended to its current form, which states that findings of fact "whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous[.]" Minn. R. Civ. P. 52.01; *see First Trust Co. Inc. v. Union Depot Place Ltd. P'ship*, 476 N.W.2d 178, 181-82 (Minn. App. 1991) (explaining 1985 amendment of Minn. R. Civ. P. 52.01), *review denied* (Minn. Dec. 31, 1991). *Ploog* predates the 1985 amendment of rule 52.01. *Olsen* was issued after the amendment but does not address the amendment and is based exclusively on pre-amendment cases. *See Olsen*, 562 N.W.2d at 800. Further, appellant is essentially asking this court to make a finding of fact regarding the nature of his employment. Appellate courts, however, do not find facts. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966). Therefore we reject his request to do so here, as well as at other points in his argument.

$73,515 annual income approximated the median income for a patent agent; that, based on information obtained from two firms employing patent agents, $73,515 was "toward the upper end of [the range for those firms,]" but that "[s]alary survey data are [also] available from the Economic Research Institute's *Salary Assessor*" and these data indicate an "[e]stimated median base salary for patent agents in Minneapolis in 2007 is $100,492, with this wage level being reached at about 7 years of experience." Before working at the law firm, appellant worked for 3M from 1973 to April 2002, finishing employment there as a senior intellectual-property specialist with a six figure salary. His 2002 tax returns reflect an adjusted gross income of nearly $180,000. In the proceedings generating the current appeal, appellant testified that the work he did for the law firm was similar to what he did at 3M. Thus, when appellant submitted the Heitzman report to the district court, he had more than the seven years of experience, which that report states was associated with an income significantly exceeding his income at that time. We decline to use the report to alter the finding that appellant was voluntarily underemployed while working at the law firm.[2]

B. Employment After August 2008

The district court denied appellant's motion to modify spousal maintenance based, in part, on its finding of his earning capacity. A district court can base maintenance on an obligor's earning capacity if the district court finds that the obligor is voluntarily

[2] Appellant argues that because this court must reverse the finding of his voluntary underemployment, it must also reverse a finding that he is in contempt of court. Because the special term panel dismissed the contempt aspects of these appeals, that finding is not at issue in this appeal.

unemployed in bad faith. *See Bourassa v. Bourassa*, 481 N.W.2d 113, 116 (Minn. App. 1992) (reversing and remanding a maintenance award when the district court failed to make a finding that the obligor was underemployed in bad faith). Whether a party is voluntarily unemployed or underemployed is a finding of fact. *See Welsh v. Welsh*, 775 N.W.2d 364, 370 (Minn. App. 2009) (stating, in the child-support context, that "[w]hether a parent is voluntarily unemployed is a finding of fact"). The district court did not specifically find appellant to be voluntarily unemployed in bad faith after the law firm terminated him in August 2008. Therefore, we remand for the district court to address whether, after August 2008, appellant exhibited bad faith regarding his employment.

C. Tax Returns

In denying appellant's motion to modify maintenance, the district court cited appellant's failure to offer his unredacted tax returns to the district court until the evidentiary hearing, which the district court ruled was "untimely." Appellant challenges this basis to deny his motion, arguing that under Minn. Stat. § 518A.39, subd. 2(a)(1), (b)(5) (2010), modification is to be based on changes in his gross income, which he provided by producing his W2 forms and 1099 forms; he also asserts that redaction of the tax returns was necessary to preserve his current wife's financial privacy.

Mere changes in gross income are insufficient to allow modification of maintenance. Maintenance may be modified upon a showing of "substantially increased or decreased gross income of an obligor" *if* the change "makes the terms [of the existing obligation] unreasonable and unfair[.]" Minn. Stat. § 518A.39, subd. 2(a)(1). Here, the

district court found appellant's redactions of his tax returns so "extensive" that they "[did] not allow the [district] court or the parties to obtain a full understanding of [appellant's] financial situation." Absent a full picture of appellant's finances, the district court could not determine whether appellant's existing maintenance obligation was unreasonable and unfair. "On appeal, a party cannot complain about a district court's failure to rule in [his] 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." *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003); *see Kielley v. Kielley*, 674 N.W.2d 770, 779-80 (Minn. App. 2004) (affirming a ruling that an appellant "failed to show that the existing maintenance order [was] unreasonable and unfair" when the party "presented virtually no evidence [other than the fact that his job loss caused his annual income to decrease from $250,000 to $22,000] regarding other aspects of the parties' financial conditions"). The district court did not abuse its discretion by using appellant's failure to timely submit complete information as a basis to deny his motion to modify maintenance.

D. Respondent's Need for Maintenance

Asserting that respondent currently has annual income of $28,708 but had no income when maintenance was awarded, appellant argues that the district court, in declining to modify maintenance, failed to find that respondent still needs maintenance and that, because respondent's current income exceeds her current expenses, maintenance should be terminated. *See Lyon v. Lyon*, 439 N.W.2d 18, 22 (Minn. 1989) (stating that maintenance is awarded to meet need). The income figure that appellant cites appears to

be a gross figure that is the sum of respondent's social-security and substitute-teaching income, as well as amounts from her share of appellant's pension. Less than this amount is available after taxes to meet respondent's living expenses. Further, the "purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances." *Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004). Here, the only expenses for respondent found by the district court are her *actual* expenses based on what the district court found was her "compromised financial status," rather than her "'reasonable' expenses" at the marital standard of living. In proceedings to modify maintenance, the burden is on the moving party to show that circumstances justify modification. *Peterson v. Peterson*, 304 Minn. 578, 580, 231 N.W.2d 85, 87 (1975). Here, appellant failed to present evidence on, and obtain a finding of, respondent's reasonable monthly expenses at the marital standard of living as well as whether her current income allows her to meet those expenses. Because *Peterson* put the burden on appellant to establish these things, his failure to do so weighs against him, and we decline to use the lack of these findings to alter the district court's ruling on the subject.

E. Appellant's Income

The district court found appellant's current monthly income for maintenance purposes to be $10,759, including $7,500 per month in actual or potential income and an additional $3,259 in retirement benefits. Appellant argues that the district court overstated his income. The dissolution judgment awarded each party half of appellant's then-earned retirement benefits. Consistent with *Lee v. Lee*, 775 N.W.2d 631, 638-40

(Minn. 2009), appellant argues that his maintenance obligation cannot be based on the portion of his retirement benefits awarded to him as property in the dissolution judgment. In finding appellant's income, the district court did not divide appellant's current retirement benefits into the portion awarded as property and the portion to be treated as income. We remand this aspect of the determination of his income for maintenance purposes. To the extent that it is equitable to alter the finding of appellant's earning capacity in light of its resolutions of other remanded questions, the district court shall have authority to do so.

F. Presumed Substantial Change in Circumstances

Citing Minn. Stat. § 518A.39, subd. 2(b)(5), appellant asserts that a "decrease in an obligor's gross income of at least 20% constitutes a rebuttable presumption that there has been a substantial change in circumstances making a maintenance obligation unreasonable and unfair." Appellant then notes that, at the time he sought to modify maintenance, his actual income was more than 20% less than his gross income at the time of the dissolution, and he argues that he therefore is entitled to a presumption that his income has substantially decreased. It is presumed that there has been a substantial change in circumstances and an existing obligation is rebuttably presumed to be unreasonable and unfair if the gross income of a party has changed "by at least 20 percent through no fault or choice of the party[.]" Minn. Stat. § 518A.39, subd. 2(b)(5) (2010). Because we remand the question of whether appellant exhibited bad faith regarding his employment after August 2008, we direct the district court, in light of its decision on that question, to readdress whether there is a presumption that there has been a substantial

change in circumstances and a rebuttable presumption that appellant's existing maintenance obligation is unreasonable and unfair.

G. Amount of Maintenance Judgment

The district court awarded respondent a judgment for $40,723.36 in unpaid maintenance. Appellant challenges aspects of this award. On remand, the district court shall, in light of its resolution of the bad-faith question, reevaluate the amount of this judgment that is attributable to unpaid maintenance accruing after appellant served his September 2008 motion to modify maintenance.

Appellant argues that $7,825.30 of respondent's award for unpaid maintenance accrued before October 2005 but that "indisputable documentary evidence of Washington County's account of appellant's arrears as of January 2007 (after his December 29, 2006 payment of $33,079.76) clearly shows no arrears at all." Appellant does not identify where in the substantial record the alleged "indisputable documentary evidence" is located. *See* Minn. R. Civ. App. P. 128.02, subd. 1(c) (stating that "[e]ach statement of a material fact shall be accompanied by a reference to the record"); *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996) (stating "material assertions of fact in a brief properly are to be supported by a cite to the record" and stating such cites are "particularly important" when "the record is extensive"), *aff'd*, 568 N.W.2d 705 (Minn. 1997). On remand, the district court shall evaluate this assertion.

Appellant argues that respondent's award for unpaid maintenance includes $10,535.28 for unpaid health-insurance premiums and that the district court lacked subject-matter jurisdiction to impose this obligation. In section II below, we reject

appellant's assertion that the district court lacked subject-matter jurisdiction to require him to pay for respondent's medical insurance. Therefore, we affirm this aspect of the district court's award.

Respondent's award for unpaid maintenance states that it includes "Statutory Interest" for unpaid maintenance and unpaid insurance premiums of $320 and $900, respectively. Appellant argues that, under Minn. Stat. §§ 548.09, subd. 1(a) (2010); .091, subd. 1(a) (2010), interest cannot accrue until judgment is entered. The award, however, does not identify the statute(s) under which it awarded the interest. Therefore, we remand the interest question.

II.

Appellant asserts that the dissolution judgment required him to provide health insurance for respondent only for a 36-month period that ended on January 15, 2003; that respondent did not move to modify the medical-insurance portion of her award before January 15, 2003; and that, therefore, the district court lost subject-matter jurisdiction over health insurance, meaning that the district court's subsequent orders requiring him to pay respondent's health insurance premiums are void.

We reject appellant's assertion that *Loo v. Loo*, 520 N.W.2d 740 (Minn. 1994) requires "loss of jurisdiction for expired temporary insurance support." There, "relitigation" of a medical-insurance question "[was] clearly precluded," but the basis for the preclusion was the idea, underlying res judicata and collateral estoppel, that once a question is litigated and decided, it should not be relitigated; *not* lack of subject-matter

jurisdiction. *See Loo*, 520 N.W.2d at 744 n.3;[3] *Moore v. Moore*, 734 N.W.2d 285, 289 n.1 (Minn. App. 2007) (addressing the impact of the expiration of a maintenance award on a district court's subject-matter jurisdiction), *review denied* (Minn. Sept. 18, 2007). Even if available, res judicata and collateral estoppel are not rigidly applied, and "[b]oth rules are qualified or rejected when their application would contravene an overriding public policy." *AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984) (quoting *Tipler v. E.I. duPont deNemours & Co.*, 443 F.2d 125, 128 (6th Cir. 1971)). Thus, even if those doctrines could apply, they would not necessarily preclude relitigating an already-decided question.

Further, while the district court's September 2000 posttrial order amended the dissolution judgment to state that appellant's payment of respondent's health-insurance premium "is not spousal maintenance," an obligation to provide health insurance for a former spouse is in the nature of maintenance. *See Thompson v. Thompson*, 739 N.W.2d 424, 429 (Minn. App. 2007) (stating that "[h]usband did not provide any evidence to rebut wife's need for spousal maintenance in the nature of one-half of wife's medical-insurance premiums"); *Casper v. Casper*, 593 N.W.2d 709, 714 (Minn. App. 1999) (stating that a child's medical needs, "including insurance coverage, 'are in the nature of

[3] In *Eckert v. Eckert*, 299 Minn. 120, 216 N.W.2d 837 (1974)—and other cases—the court ruled that a district court loses jurisdiction to address maintenance after an existing maintenance award expires. *Eckert* is mentioned in the portion of *Loo* addressing the effectiveness of a waiver under *Karon v. Karon*, 435 N.W.2d 501 (Minn. 1989), of the right to modify maintenance. 520 N.W.2d at 744-46. A *Karon*-waiver of the right to modify maintenance is not at issue here. Because it is in the context of a question not at issue here that *Loo* mentions *Eckert*, we reject appellant's assertion that *Loo* extended *Eckert*'s loss-of-jurisdiction analysis to a health insurance obligation.

child support'") (quoting *Korf v. Korf*, 553 N.W.2d 706, 708 (Minn. App. 1996)). A district court has subject-matter jurisdiction to address maintenance. The district court did not lack subject-matter jurisdiction to address appellant's obligation to provide medical insurance for respondent, and we therefore affirm that portion of the district-court order.

III.

The district court ruled that appellant's refusals to pay respondent the amounts ordered by the court constituted "extraordinary circumstances" under Minn. Stat. § 518.145, subd. 2 (2010), that justified reopening the dissolution judgment's property division, including the division of appellant's 3M retirement plan, "for the purpose of enforcing [appellant's] obligation as ordered by the Court." Noting that the division of property in a dissolution judgment is final after the time to appeal that judgment expires, appellant challenges the use of his retirement account to satisfy the unpaid portions of his obligations. We reject appellant's argument.

With exceptions not at issue here,

> all divisions of real and personal property provided by section 518.58 shall be final, and may be revoked or modified only where the court finds the existence of conditions that justify reopening a judgment under the laws of this state, including motions under section 518.145, subdivision 2. *The court may impose a lien or charge on the divided property at any time while the property, or subsequently acquired property, is owned by the parties or either of them, for the payment of maintenance or support money, or may sequester the property as is provided by section 518A.71.*

Minn. Stat. § 518A.39, subd. 2(f) (2010) (emphasis added). Section 518A.71, in turn, states that

> when maintenance or support payments are ordered, the court may require sufficient security to be given for the payment of them according to the terms of the order. Upon neglect or refusal to give security, or upon failure to pay the maintenance or support, *the court may sequester the obligor's personal estate and the rents and profits of real estate of the obligor, and appoint a receiver of them.* The court may cause the personal estate and the rents and profits of the real estate to be applied according to the terms of the order.

Minn. Stat. § 518A.71 (2010) (emphasis added). These statutes were previously numbered Minn. Stat. § 518.64, subd. 2 and Minn. Stat. § 518.24, respectively.

In *Porter v. Porter*, 389 N.W.2d 739 (Minn. App. 1986), a husband had maintenance arrears and his wife tried to satisfy her judgment against him for those arrears by seizing the proceeds of the contract for deed of the sale of the husband's home that had been awarded to him in the dissolution judgment. The husband argued that proceeds were exempted from seizure by the constitutionally-based homestead exemption. This court rejected the argument, stating: "We hold that the homestead exemption does not prevent a trial court, acting pursuant to its equitable powers outlined in Minn. Stat. §§ 518.24 and 518.64, from applying property divided in a dissolution to satisfaction of a spouse's judgment based on maintenance arrears." *Porter*, 389 N.W.2d at 742. *Porter* is an example of the general rule that while a district court cannot alter an otherwise final property division, Minn. Stat. § 518A.39, subd. 2(f), it has "the power to implement or enforce the provisions of a judgment and decree so long as the parties' substantive rights are not changed." *Kornberg v. Kornberg*, 542 N.W.2d 379, 388 (Minn. 1996). Thus, unpaid obligations that are based on a party's income can be secured by and enforced against the obligor's property.

Here, the district court stated that it was awarding respondent the additional share of appellant's retirement account "for the purpose of enforcing [appellant's] obligation as ordered by the Court." To the extent the district court was enforcing appellant's maintenance obligation, it was not altering the parties' rights; appellant's failure to pay maintenance from his income means that he retained that income but subjected himself to a loss of property worth an amount equal to the maintenance that was not paid, plus any associated costs and fees that might be awarded. Thus, when the district court reopened the dissolution judgment under Minn. Stat. § 518.145, subd. 2, to enforce respondent's maintenance award, it reached a result it could have reached under Minn. Stat. §§ 518A.39, subd. 2(f), .71, and we ignore as harmless any error in the district court's use of Minn. Stat. § 518.145, subd. 2, rather than Minn. Stat. §§ 518A.39, subd. 2(f), .71, to do so. *See* Minn. R. Civ. P. 61 (requiring errors that do not affect a party's substantial rights to be ignored or disregarded); *Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that a district court's decision will not be reversed if it reached correct result for wrong reason); *see also Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that, to prevail on appeal, appellant must show both error and prejudice). Nor is it problematic that enforcement of the dissolution judgment resulted in an alteration of the form of respondent's award from a payment from appellant's income (maintenance) to a payment that may have been at least partially from a portion of his retirement account awarded as property. *See Porter*, 389 N.W.2d at 742 (satisfying a judgment for maintenance arrears by allowing the wife to seize the proceeds of the contract for deed of husband's home); *Hanson v. Hanson*, 379 N.W.2d 230, 233

(Minn. App. 1985) (affirming a district court's conversion of one party's share of parties' marital property to cash award after the parties were unable to divide the property). For these reasons, we need not further address appellant's argument that the district court misapplied Minn. Stat. § 518.145, subd. 2.

Based primarily on *Lee*, appellant argues that Minn. Stat. § 518.003, subd. 3a (2010), defines maintenance as a payment from "future income or earnings" and argues that because his retirement account was awarded to him as property, the retirement account cannot be used to satisfy his maintenance obligation. 775 N.W.2d at 640. *Lee*, however, involved the setting of maintenance, not enforcement. *Id.* *Lee* does not preclude enforcing maintenance obligations against property, and we reject appellant's *Lee*-based argument that his obligation cannot be enforced against his retirement account or other property.

Appellant also argues that because the time to appeal the 2001 qualified domestic relations order (QDRO) dividing his retirement account has expired, the district court lacks authority to change that division, and therefore the August 24, 2010 QDRO must be set aside. Because the district court is not altering the existing QDRO in a fashion that alters an otherwise final property award but is simply enforcing appellant's unpaid maintenance obligation against that property award, it did not lack authority to issue the August 24, 2010 QDRO. *See Porter*, 389 N.W.2d at 742 (allowing enforcement of maintenance arrears against the proceeds of a home awarded in the dissolution judgment).

Appellant further argues that the use of his retirement account to satisfy his obligations is, essentially, a garnishment and that the monthly amount being "garnished" exceeds the maximum amount garnishable under Minn. Stat. § 571.922(a) (2010), and 15 U.S.C. § 1673(b)(2)(A) (2006). Appellant's argument to the district court, however, was that, under ERISA provisions prohibiting transfer and alienation of pension interests, his retirement account could not be used *at all* to satisfy his obligations. Appellate courts generally address only those questions presented to and considered by the district court, nor may a party obtain review by raising the same general issue on appeal that was raised in district court but on a new theory. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because appellant switched the theory under which he is seeking to avoid the use of his retirement account as a basis for satisfying his obligation from ERISA-based anti-alienation provisions to state and federal garnishment limits, his argument is not properly before this court, and we decline to address it.

IV.

Without citing any authority, the district court limited appellant's ability to bring future motions. Appellant challenges these limits, arguing that the district court failed to satisfy Minn. R. Gen. Pract. 9, which addresses frivolous litigation. In *Szarzynski v. Szarzynski*, a district court "[w]ithout citing any authority," ruled a father to be a "nuisance litigant" and required him to obtain the court's permission before filing future motions, and the father challenged that ruling arguing, among other things, that it failed to satisfy Minn. R. Gen. Pract. 9. 732 N.W.2d 285, 294 (Minn. App. 2007). This court reversed and remanded because rule 9 had not been satisfied. *Id.* at 294-95. This case is

similar to *Szarzynski* in that (a) the district court did not cite authority for limiting appellant's ability to litigate; (b) the motion to limit appellant's ability to litigate was not separate from respondent's other requests for relief as required by rule 9.01; (c) there was no express determination that lesser sanctions would be insufficient to protect respondent, the public, or the courts, as required by rule 9.02(c); and (d) the district court did not otherwise refer to rule 9. We reverse the limits imposed on appellant's ability to litigate, and remand for the district court to apply rule 9 and, if appropriate, re-address appellant's ability to litigate in light of its application of that rule.

V.

A district court "shall" award need-based attorney fees if it finds the fees are necessary for a good-faith assertion of the recipient's rights, the party ordered to pay them has the ability to do so, and the recipient does not have the ability to pay the fees. Minn. Stat. § 518.14, subd. 1 (2010). A district court has discretion to award "additional" conduct-based attorney fees against a party who unreasonably contributes to the length or expense of the proceeding. Minn. Stat. § 518.14, subd. 1. The district court awarded respondent $27,496 in need-based and conduct-based attorney fees. Appellant argues that the award is defective because the district court did not identify how much of the award is conduct-based and how much is need-based. *See Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001) (remanding when the district court did not identify the basis for a fee award and the record was otherwise insufficient to facilitate review of that award).

The district court stated: "It is reasonable and fair to award attorney fees in the amount of $27,496 through January 18, 2010 on the basis of [appellant's] conduct which has unduly increased the length of these proceedings, and to allow [r]espondent to continue to contest [appellant's] multiple motions presented to the Court prior to that date." This statement shows that the district court believed the entire award to be justified as either conduct-based or need-based fees. That the entire award is justified as conduct-based fees is consistent with the district court's general discussion of appellant's unnecessarily litigious conduct and the finding that the degree of litigation in this case is a result of "[appellant] willfully and intentionally choos[ing] not to make payments of spousal maintenance and medical-insurance premiums simply because he disagreed with the Court's orders."

Conduct-based fee awards are reviewed for an abuse of the district court's discretion. *Sharp v. Bilbro*, 614 N.W.2d 260, 264 (Minn. App. 2000), *review denied* (Minn. Sept. 26, 2000). Appellant argues that the district court abused its discretion by awarding the fees because its supporting findings are conclusory and do not adequately and correctly address the parties' financial situation. The crux of appellant's argument is that his actual income does not show that he has the ability to pay the award. Conduct-based fees, however, can 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." *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991); *see Gales v. Gales*, 553 N.W.2d 416, 423 (Minn. 1996) (citing *Dabrowski* for this proposition). Thus, appellant's alleged inability to pay the fee award does not show the award to be defective.

Because the fee award is justified as an award of conduct-based fees, we decline to address the parties' disputes regarding need-based fees.

Affirmed in part, reversed in part, and remanded.