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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2147**

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

vs.

Zenith Annette Huntsman,  
Respondent.

**Filed October 28, 2013  
Affirmed  
Larkin, Judge**

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

Andrew J. Dawkins, St. Paul, Minnesota (for appellant)

Brad C. Eggen, Law Office of Brad C. Eggen, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Connolly, Judge; and Larkin,  
Judge.

**UNPUBLISHED OPINION**

**LARKIN**, Judge

On appeal after remand, appellant-husband challenges the district court's  
(1) denial of his motion to modify spousal maintenance; (2) amended judgment for  
respondent; (3) order placing conditions on his filing of future motions; (4) award of

need-based attorney fees; and (5) rulings regarding conduct-based attorney fees. We affirm.

## FACTS

This appeal is the latest in a series of appeals by appellant James Richard Huntsman that stem from his marital-dissolution dispute with respondent Zenith Annette Huntsman. *See Huntsman v. Huntsman*, 633 N.W.2d 852 (Minn. 2001); *Huntsman v. Huntsman*, No. A10-930, 2011 WL 2119336 (Minn. App. May 31, 2011), *review denied* (Minn. Aug. 24, 2011); *Huntsman v. Huntsman*, No. A08-313 (Minn. App. Jan. 20, 2009), *review denied* (Minn. Mar. 31, 2009); *Huntsman v. Huntsman*, No. A06-1064 (Minn. App. June 26, 2007); *Huntsman v. Huntsman*, No. A05-2168 (Minn. App. Sept. 26, 2006), *review denied* (Minn. Dec. 20, 2006); *Huntsman v. Huntsman*, No. A04-286 (Minn. App. Nov. 30, 2004), *review denied* (Minn. Feb. 23, 2005); *Huntsman v. Huntsman*, No. C9-02-85 (Minn. App. Sept. 3, 2002), *review denied* (Minn. Nov. 19, 2002); *Huntsman v. Huntsman*, No. C1-00-1923 (Minn. App. Apr. 16, 2002), *review denied* (Minn. June 26, 2002). Much of the appellate litigation has revolved around appellant's failure to pay his various court-ordered spousal-maintenance obligations to respondent.

The 2000 judgment dissolving the parties' marriage awarded respondent permanent spousal maintenance, required appellant to pay respondent's health-insurance premium, and divided appellant's retirement account via a qualified domestic relations order (QDRO). The judgment states that "as is the case with most divorces, it is impossible for either party to enjoy the same standard of living that the parties enjoyed

while they were married.” At the time of the dissolution, appellant, who has a Ph.D. in physical chemistry and an MBA in management, had worked for 3M since 1973 and was a senior intellectual-property analyst with an annual income of approximately \$100,000. In 1998, appellant passed the patent bar and became a patent agent. Respondent, however, was unemployed.

In April 2002, 3M informed appellant that his position would be eliminated, and appellant became unemployed in May. By 2005, after at least two interim jobs, appellant had become employed as a specialist paralegal with what was then the Faegre & Benson law firm. In September, the district court directed appellant to continue to pay respondent’s health-insurance premium. In August 2008, appellant’s position at Faegre & Benson was eliminated.

On December 11, 2009, the district court held a hearing on appellant’s motions to modify spousal maintenance and terminate his health-insurance obligations. The district court issued a 34-page order, which was filed on April 19, 2010. In that order, the district court found that appellant’s submitted tax returns contained redactions that were so “extensive” that they did not “allow the [c]ourt or the parties to obtain a full understanding of [appellant’s] financial situation.” The district court noted that it had “repeatedly” informed appellant “that full and complete financial records are an essential element of evaluating any claims he has for a downward modification of maintenance or medical insurance premiums.”

In denying appellant’s motion to reduce his maintenance obligation in 2010, the district court found that, since 2002, appellant had been voluntarily underemployed. The

court imputed income to appellant based on “what [his] current earning capacity would be if he had not been intentionally underemployed since 2002.” The district court concluded that the sum of appellant’s imputed earning capacity and retirement benefits showed no substantial change in circumstances rendering his existing obligation unreasonable and unfair. The district court also (1) awarded respondent a \$40,723.36 judgment for unpaid maintenance and related obligations; (2) continued appellant’s obligation to pay respondent’s health-insurance premium; (3) ruled that appellant’s conduct in failing to comply with his maintenance obligations and engaging in extensive litigation and relitigation of the same questions constituted extraordinary circumstances justifying reopening of the dissolution judgment and an additional QDRO to pay appellant’s existing obligations to respondent as well as to assure a mechanism for future payments to respondent; (4) precluded appellant from filing future motions with the court unless, among other things, he posted security, averred that his maintenance obligations were paid, and received approval of the proposed filing from the court; and (5) awarded respondent \$27,496 in need-based and conduct-based attorney fees. The district court also found appellant in contempt of court for his failure to pay his obligations and reserved respondent’s motion for a supplemental QDRO until a future hearing. Appellant appealed that order to this court.

After a May 28 hearing, the district court issued two orders on August 24. One sentenced appellant to 60 days incarceration for his contempt, set purge conditions, stated that the supplemental QDRO would be signed, and denied respondent’s request for a writ of execution, among other things. The other order was the supplemental QDRO.

Appellant appealed both of those orders and moved to consolidate the appeals. This court granted the motion to consolidate, and we released a decision on the consolidated appeals on May 31, 2011.

In the May 2011 opinion, we concluded that “[t]he district court did not abuse its discretion by using appellant’s failure to timely submit complete [financial] information as a basis to deny his motion to modify maintenance.” *Huntsman*, 2011 WL 2119336, at \*2. But we found that “[t]he district court did not specifically find appellant to be voluntarily unemployed in bad faith after the law firm terminated him in August 2008.” *Id.* We reversed and remanded on the issue of maintenance modification “to address whether, after August 2008, appellant exhibited bad faith regarding his employment.” *Id.*

We also reversed and remanded on the following issues: (1) to “divide appellant’s current retirement benefits into the portion awarded as property and the portion to be treated as income” for “the determination of [this aspect] of his income for maintenance purposes”; (2) to readdress, in light of the remand on the bad-faith issue, “whether there is a [statutory] presumption [based on a decrease of appellant’s income by over 20%] that there has been a substantial change in circumstances and a rebuttable presumption that appellant’s existing maintenance obligation is unreasonable and unfair”; (3) to, in light of its resolution of the bad-faith question, reevaluate the amount of the \$40,723.36 judgment in unpaid maintenance that “is attributable to unpaid maintenance accruing after appellant served his September 2008 motion to modify maintenance”; (4) to “evaluate” appellant’s assertion that \$7,825.30 of the \$40,723.36 award for unpaid maintenance should be subtracted because this amount “accrued before October 2005,” in light of his

accompanying assertion that there is “indisputable documentary evidence of Washington County’s account of [his] arrears as of January 2007 . . . [which] clearly shows no arrears at all”; (5) to identify the statutes on which the district court relied when ordering interest for unpaid maintenance and unpaid insurance premiums in the amounts of \$320 and \$900, respectively; and (6) to apply Minn. R. Gen. Pract. 9 in order to “re-address appellant’s ability to litigate in light of . . . application of that rule.” *Id.* at \*3-5, \*8.

On remand, the district court found that appellant “was not voluntarily unemployed in bad faith regarding his employment after August 2008.” But it concluded that “due to the lack of financial information regarding [appellant’s] actual income, it cannot determine whether [appellant’s] income has decreased by over twenty-percent (20%), resulting in a substantial change of circumstances, or whether a rebuttable presumption exists that the existing maintenance obligation is unreasonable and unfair.” The district court “reserve[d] this issue pending the filing of a further notice of motion and motion for modification of maintenance.”

The district court further concluded that “[appellant’s] portion of the retirement benefits was awarded to him as property, and therefore this amount cannot be used to determine [appellant’s] actual income.” The district court found that \$22,362.76 of the \$40,723.36 judgment for unpaid maintenance related to payment obligations following September 2008, but left that amount in place “[b]ecause [it] [did] not currently have sufficient information to alter the maintenance payments.” The district court evaluated appellant’s “assertion that \$7,825.30 of the judgment for unpaid maintenance accrued before October 2005 was improper” and reasoned that it was “not required to accept

[appellant's] mere assertion" that it was improper, nor was it required to "accept figures from Washington County without validation as to their meaning, when it previously made conclusive findings as to the amount of unpaid maintenance." The district court found "that judgment in the amount of \$7,825.30 for unpaid maintenance accrued before October 2005 was proper."

The district court further found that "statutory interest was awarded pursuant to Minnesota Statute § 549.09, following entry of judgment in September 2005." It ruled that "the amount of \$900.00 remains" because the court of appeals affirmed respondent's health-insurance-premium award, but it ruled that it "is unable to find whether [the interest amount of \$320.00 for unpaid maintenance] was calculated properly given its lack of information regarding [appellant's] finances." The district court further found, under Minn. R. Gen. Pract. 9.02, that "throughout the history of this case, [appellant] has engaged in frivolous litigation through numerous appeals that were found to be without merit, and that [r]espondent, as a result of [appellant's] litigious behavior, has been left in an extremely compromised financial position"; that "it is reasonable to place at least some limitations on [appellant's] future litigation activity"; and that no less severe sanction than requiring appellant to confirm that he has paid all his arrears of spousal maintenance and health-insurance premiums before any future motions "will sufficiently protect the rights of [r]espondent, the public, and the courts." The district court also addressed a number of issues that appellant raised in a motion to reconsider that are not raised in this appeal. Finally, the district court found that respondent was "entitled to need-based attorney fees in the amount of \$9,131.00 regarding the current proceedings,"

and that the attorney fees were “needed for [r]espondent’s good faith assertion of rights, and that [r]espondent is unable to pay.”

Appellant moved to amend the findings of fact and judgment, and the district court amended its finding of fact to reflect a partial satisfaction of judgment in the amount of \$4,366.54, for payments made from the release of an appeal bond and escrowed funds. The district court amended judgment for respondent to \$36,356.82. This appeal follows.

## **D E C I S I O N**

Appellant argues that the district court erred in (1) denying his motion to modify spousal maintenance; (2) awarding an amended judgment in the amount of \$36,356.82; (3) placing conditions on his ability to file future motions; (4) awarding respondent \$9,131.00 for need-based attorney fees and in denying his motion for conduct-based attorney fees related to his reconsideration motion; and (5) affirming its judgment of \$27,496.00 for attorney fees.<sup>1</sup> We address each argument in turn.

### **I.**

Appellant argues that the district court erred in denying his motion to modify spousal maintenance on remand. 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) (2012). It is presumed that there has been a substantial change in circumstances and an existing obligation is rebuttably presumed to be

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<sup>1</sup> In his brief, appellant asked this court to address whether the district court erred in denying release of his “excess 3M supersedeas funds.” But in his reply brief, appellant refers to on-going activity regarding this issue in the district court and states that he “will address the supersedeas security issue in a forthcoming motion under Minn. R. Civ. App. P. 108.02, subd. 6.” Accordingly, we do not address the issue.



unreasonable and unfair if the gross income of a party has “decreased by at least 20 percent through no fault or choice of the party.” *Id.*, subd. 2(b)(5) (2012).

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. 1984) (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).

In our May 2011 opinion, we concluded that “[t]he district court did not abuse its discretion by using appellant’s failure to timely submit complete [financial] information as a basis to deny his motion to modify maintenance,” but we nevertheless instructed the district court “to address whether, after August 2008, appellant exhibited bad faith regarding his employment.” *Huntsman*, 2011 WL 2119336, at \*2. We further instructed the district court to readdress, in light of the remand on the bad-faith issue, whether there is a statutory presumption that there has been a substantial change in circumstances. *Id.* at \*4. On remand, the district court found that appellant was not unemployed in bad faith

after August 2008, but it concluded that it still lacked sufficient financial information from appellant regarding his actual income to determine whether or not there is a statutory presumption of a substantial change in circumstances.

The crux of appellant's argument is that the district court "again denied modification on the sole grounds that it lacked sufficient information of [his] gross income after August 2008 to determine whether a substantial change in . . . circumstances had occurred, due to [his] partially redacted tax returns," but the remand issue "requires a determination of [his] gross income only after August 2008" and "[his] tax returns for 2008, even if unredacted, do not provide the evidence material to a determination of this remanded issue." Appellant further argues that the record contains "undisputed testimony by his affidavit that his income after August 2008 was only from his unemployment benefits," and that he "also provided oral testimony . . . that established his post-August-2008 income . . . was only from his unemployment benefits." Appellant argues that these testimonies, along with a previous district court finding that he "has a gross annual income of \$29,276.00 from his unemployment benefits," show that his income decreased by more than 20%, creating a statutory presumption of a substantial change in circumstances and a rebuttable presumption that his maintenance obligation is unreasonable and unfair.

Appellant's argument is not persuasive. The district court obviously did not find credible appellant's affidavit or oral testimony regarding his income after August 2008. The district court "is not required to accept even uncontradicted testimony if the surrounding facts and circumstances afford reasonable grounds for doubting its

credibility.” *Varner v. Varner*, 400 N.W.2d 117, 121 (Minn. App. 1987); *see Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that appellate courts defer to district court credibility determinations); *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998) (noting that appellate courts defer to district court determinations regarding the credibility of affidavits). In this case, the district court had reasonable grounds to doubt appellant’s credibility regarding his post-August 2008 income. During the course of this case, the district court had “repeatedly” informed appellant “that full and complete financial records [were] an essential element of evaluating any claims he has for a downward modification of maintenance.” Nonetheless, appellant presented the district court with redacted tax forms. Moreover, appellant acknowledged that after August 2008, he visited relatives in San Diego, California, vacationed in Mexico, drove to Rapid City, South Dakota, took an Alaskan cruise, vacationed in Canada, and visited family in Daytona Beach, Florida. Appellant’s repeated refusal to satisfy his spousal-maintenance obligations as ordered by the district court and to be forthcoming about his income, along with his admissions regarding extensive travel, provided the district court with reasonable grounds to doubt the credibility of the assertions he made regarding his income in his affidavit and oral testimony.

Appellant, despite being “repeatedly” told by the district court that producing his “full and complete financial records” was “essential” to evaluation of his motion to modify his maintenance obligation, refused to present the required “full and complete” financial records. *See Butt v. Schmidt*, 747 N.W.2d 566, 576 (Minn. 2008) (stating that “we have held that a party in exclusive possession of evidence has the burden to produce

that evidence,” that it is not uncommon in dissolution proceedings for one party to have more thorough knowledge of their own financial circumstances, and that, “if a party is in exclusive possession of evidence and that party fails to produce the evidence, an unfavorable inference may be drawn about that party as to the relevant issue”). Nor did appellant otherwise produce credible evidence regarding his income. On this record, the district court did not abuse its discretion by declining to modify his maintenance obligation on remand.

## II.

Appellant assigns multiple errors to the district court’s amended judgment in the amount of \$36,356.82. We address each alleged error in turn.

First, appellant asserts that “[t]he district court erred in affirming its judgment of \$7,825.30 for unpaid maintenance prior to October 2005,” arguing that the court’s finding supporting that amount is clearly erroneous. In our May 2011 opinion, we directed the district court to “evaluate” appellant’s assertions that \$7,825.30 for unpaid maintenance should be subtracted from the judgment because this amount “accrued before October 2005” and that there is “indisputable documentary evidence of Washington County’s account of [his] arrears as of January 2007 . . . [which] clearly shows no arrears at all.”” *Huntsman*, 2011 WL 2119336, at \*4. On remand, the district court evaluated appellant’s “assertion that \$7,825.30 of the judgment for unpaid maintenance accrued before October 2005 was improper” and reasoned that it was “not required to accept [appellant’s] mere assertion” that it was improper, nor was it required to “accept figures from Washington County without validation as to their meaning, when

it previously made conclusive findings as to the amount of unpaid maintenance.” Thus, the district court evaluated appellant’s assertion, did not find appellant’s supporting documentation credible, and concluded that \$7,825.30 for unpaid maintenance prior to October 2005 was properly included in the judgment for respondent. This court defers to the district court’s credibility determination. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (“When determining whether findings are clearly erroneous, the appellate court views the record in the light most favorable to the [district] court’s findings. Also, appellate courts defer to [district] court credibility determinations.” (citations omitted)).

Second, appellant argues that “[t]he district court erred in failing to credit [him] for his health insurance premium payments of \$2,104 prior to February 2007.” In our May 2011 opinion, we affirmed the district court’s award of \$10,535.28 for unpaid health-insurance premiums. *Huntsman*, 2011 WL 2119336, at \*4. We therefore do not revisit this issue in this appeal. *See Sylvester Bros. Dev. Co. v. Great Cent. Ins. Co.*, 503 N.W.2d 793, 795 (Minn. App. 1993) (stating that “when an appellate court has ruled on a legal issue and remanded the case for further proceedings on other matters . . . [t]he issue decided becomes the ‘law of the case’ and may not be relitigated in the [district] court or re-examined in a second appeal”), *review denied* (Minn. Sept. 30, 1993); *see also* Minn. R. Civ. App. P. 140.01 (stating that there is no petition for rehearing in the court of appeals).

Third, appellant argues that “[t]he district court erred in affirming its \$10,535.28 judgment for unpaid health insurance premiums,” and that the “\$10,535.28 was not

absolutely affirmed in its entirety in [the May 2011 opinion].” In our May 2011 opinion, we rejected appellant’s argument regarding the \$10,535.28 for unpaid health-insurance premiums and explicitly affirmed the amount. *Huntsman*, 2011 WL 2119336, at \*4. We therefore do not revisit the issue. *See Sylvester Bros.*, 503 N.W.2d at 795; *see also* Minn. R. Civ. App. P. 140.01.

Fourth, appellant argues that “[t]he district court erred in affirming its \$600.00 judgment to respondent for [his] unpaid service fees to the” department of human services. Appellant raised this issue for the first time on remand, and the district court ruled that the “issue is not subject to remand and will not be addressed by the [c]ourt.” The district court did not err in declining to address this issue. *See Janssen v. Best & Flanagan, LLP*, 704 N.W.2d 759, 763 (Minn. 2005) (“Appellate courts review a district court’s compliance with remand instructions under the deferential abuse of discretion standard.”); *Halverson v. Vill. of Deerwood*, 322 N.W.2d 761, 766 (Minn. 1982) (stating that the district court’s duty on remand is to execute the mandate of the appellate court strictly according to its terms). Because this issue was not addressed by the district court, we do not consider its merits on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts must generally consider only those issues that were presented to and considered by the district court in deciding the matter before it).

Fifth, appellant argues that “[t]he district court erred in affirming its judgment of interest of \$320.00 for unpaid spousal maintenance and of \$900.00 for unpaid health insurance premiums.” In our May 2011 opinion, we directed the district court to identify the statutes on which the district court relied when ordering interest for unpaid

maintenance and unpaid insurance premiums in the amounts of \$320 and \$900, respectively. *Huntsman*, 2011 WL 2119336, at \*5. On remand, the district court found that “statutory interest was awarded pursuant to Minnesota Statute § 549.09, following entry of judgment in September 2005.” Appellant argues that “[b]ecause neither respondent nor the district court has established that the \$320 and \$900 comply with Minn. Stat. § 549.09, subd. 2, they must be rejected as a matter of law and vacated from the \$36,356.82 judgment.” But on appeal the burden is not on the respondent or the district court to show lack of error. The burden is on appellant, and he fails to show how the district court erred. *See Loth v. Loth*, 227 Minn. 387, 392, 35 N.W.2d 542, 546 (1949) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it.” (quotation omitted)).

Finally, appellant asserts that “[t]he district court erred in denying [him] credit for his \$7,249.70 arrears payments . . . solely because [he] had not recorded satisfaction thereof.” But appellant provides no legal analysis to support his assertion. The issue is therefore waived. *See State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” (quotation omitted)).

### **III.**

Appellant argues that “[t]he district court erred in limiting [his] rights of future litigation under [Minn. R. Gen. Pract.] 9” because the court did not require a separate

motion under rule 9.01, failed to hold a separate proceeding, and “continued to erroneously view the Rule 9 motion as part of the original modification motions and integrated it into the remand proceeding.”

When reviewing a district court’s decision to impose sanctions, we apply an abuse of discretion standard. *See Cole v. Star Tribune*, 581 N.W.2d 364, 370 (Minn. App. 1998) (stating that an abuse of discretion standard is applied to the district court’s decision on sanctions under Minn. Stat. § 549.21 (1996) or Minn. R. Civ. P. 11). Under rule 9.01, “[a]ll motions . . . shall be made separately from other motions or requests, and shall be served as provided in the Rules of Civil Procedure.” Minn. R. Gen. Pract. 9.01.

As to appellant’s argument that the district court erred in failing to require respondent to file a separate motion, the district court considered application of rule 9 pursuant to our remand instructions, instead of a motion. *See Huntsman*, 2011 WL 2119336, at \*8 (“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.”). Moreover, under rule 9, a motion is not necessarily required at all because the district court can impose preconditions on a litigant’s filing of new motions or requests “on its own initiative.” Minn. R. Gen. Pract. 9.01. Finally, appellant fails to show how he was prejudiced by this purported error. *See Loth*, 227 Minn. at 392, 35 N.W.2d at 546 (stating that “we do not reverse unless there is error causing harm to the appealing party,” and that “error without prejudice is not ground for reversal” (quotation omitted)). As to his argument that the district court was obligated to hold a separate hearing, appellant cites no authority for his



proposition. *See id.* (stating that “the burden of showing error rests upon the one who relies upon it” (quotation omitted)).

Appellant also argues that because the district court “reversed its rulings to impute income and to use [his] pension as income for maintenance . . . there is insufficient evidence to support a finding that appellant’s litigation constituted ‘most egregious circumstances,’ which is necessary to invoke Rule 9.” But the district court did not base its limitations solely on appellant’s current motions. Rather, it considered appellant’s behavior throughout the more than decade-long history of the case. The district court found that “throughout the history of this case, [appellant] has engaged in frivolous litigation through numerous appeals that were found to be without merit, and that [r]espondent, as a result of [appellant’s] litigious behavior, has been left in an extremely compromised financial position.” We are not persuaded that the district court abused its discretion. *See* Minn. R. Gen. Pract. 9.02(b) (instructing the district court to consider, among other factors, “the frequency and number of claims pursued by the frivolous litigant with an adverse result” and “injury incurred by other litigants prevailing against the frivolous litigant”).

#### IV.

Appellant argues that “[t]he district court erred in awarding respondent \$9,131.00 for need-based attorney fees.” “The standard of review for an appellate court examining an award of attorney fees is whether the district court abused its discretion.” *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999). *But cf. Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999) (stating that Minn. Stat. § 518.14, subd. 1 (1998) “requires the

court to award attorney fees if the fees are necessary to allow a party to continue an action brought in good faith, the party from whom fees are requested has the means to pay the fees, and the party seeking fees cannot pay the fees”).

A district court “shall award attorney fees, costs, and disbursements” if it finds:

(1) that the fees are necessary for the good faith assertion of the party’s rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2012). “Conclusory findings on the statutory factors do not adequately support a fee award.” *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001). But a lack of specific findings on the statutory factors for a need-based fee is not fatal to an award if review of the district court’s order “‘reasonably implies’ that the district court considered the relevant factors and . . . the district court ‘was familiar with the history of the case’ and ‘had access to the parties’ financial records.’” *Id.* (quoting *Gully*, 599 N.W.2d at 825-26).

The district court found respondent “is entitled to need-based attorney’s fees in the amount of \$9,131.00 regarding the current proceedings. The [c]ourt [found] that such fees were needed for [r]espondent’s good faith assertion of rights, and that [r]espondent is unable to pay.” The district court also noted that respondent’s “financial shortages and difficulties have been documented in various findings” throughout the history of this case. Although the district court did not specifically address whether appellant has the

means to pay the attorney fees, the court was clearly familiar with the history of the case and, in addressing other issues, explained that it could not fully determine that there had been a substantial change in appellant's income because he did not supply sufficient documentation. And because, in its memorandum of law, the district court explicitly acknowledged that a court may only award need-based attorney fees "upon a finding that . . . the payor has the ability to pay the fees," and then proceeded to award respondent need-based attorney fees, "to be paid by [appellant]," it is reasonable to conclude that the district court considered this factor. Because the district court's findings at least reasonably imply that the court considered all the relevant factors, we conclude that the district court did not abuse its discretion. *See id.*

Appellant also argues that "[t]he district court's denial of [his] motion for conduct-based attorney fees . . . should be reversed and granted." Conduct-based fee awards "are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). The authorities that appellant cites do not persuade us that the district court abused its discretion in declining to award him conduct-based attorney fees. *See Engquist v. Wirtjes*, 243 Minn. 502, 503, 68 N.W.2d 412, 414 (1955) (stating that "[t]he function of an appellate court is that of review. It does not exist for the purpose of demonstrating to the litigants through a detailed statement of the evidence that its decision is right").

## V.

Appellant argues that "[t]he district court erred in affirming its judgment of \$27,496.00 for attorney fees, where, upon remand, [he] was not found to have engaged in

bad-faith or unreasonable litigation.” In our May 2011 opinion, we affirmed the district court’s award of \$27,496 to respondent for attorney fees on the basis that “the fee award is justified as an award of conduct-based fees.” *Huntsman*, 2011 WL 2119336, at \*9. Because we previously affirmed the \$27,496 attorney-fee award, this issue is not subject to further review. *See Sylvester Bros.*, 503 N.W.2d at 795 (stating that “when an appellate court has ruled on a legal issue and remanded the case for further proceedings on other matters . . . [t]he issue decided becomes the ‘law of the case’ and may not be relitigated in the [district] court or re-examined in a second appeal”); *see also* Minn. R. Civ. App. P. 140.01. Appellant urges this court to review the issue in the interest of justice, *see* Minn. R. Civ. App. P. 103.04 (stating that appellate courts “may review any . . . matter as the interest of justice may require”), but he does not provide a compelling reason for such review.

We have carefully considered all of appellant’s other arguments and conclude that none provides a basis for reversal. *See Engquist*, 243 Minn. at 503, 68 N.W.2d at 414.

**Affirmed.**