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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0663**

In re the Marriage of:
Michael R. Shreve, petitioner,
Appellant,

vs.

Chantal T. Shreve,
Respondent.

**Filed April 10, 2017
Affirmed
Bratvold, Judge**

Dakota County District Court
File No. 19-FX-04-009617

Kathleen M. Newman, Alexandra L. Michelson, Kathleen M. Newman + Associates, P.A.,
Minneapolis, Minnesota (for appellant)

Karim G. El-Ghazzawy, Basil S. El-Ghazzawy, El-Ghazzawy Law Offices, LLC,
Minneapolis, Minnesota (for respondent)

Considered and decided by Schellhas, Presiding Judge; Kirk, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant-husband challenges the denial of his motions to modify his permanent
spousal-maintenance obligation and to compel discovery of respondent-wife's health and

finances. Husband also appeals the award of conduct-based attorney fees to wife. Because the district court did not abuse its discretion when it denied husband's motions, we affirm.

FACTS

Appellant Michael Shreve (Michael) and respondent Chantal Shreve (Chantal) were married for 13 years and had three children.¹ In 2005, the district court entered judgment dissolving the marriage and incorporating the terms of the parties' stipulation resolving all disputes. The 2005 judgment provided that Michael, a physician, would pay Chantal permanent spousal maintenance of \$7,125 per month "until [Chantal's] remarriage, or her death, whichever first occurs, or if there is a substantial change in circumstances which justify a modification." After cost-of-living adjustments, Michael's monthly maintenance obligation at the time relevant here was \$8,289.13.

At the time of the 2005 judgment, Chantal was unemployed and received Social Security disability benefits because of a chronic autoimmune disorder, muscle myopathy. Chantal was also involved in a lawsuit against her private disability insurer for discontinuation of her benefits. The 2005 judgment required Chantal to "pursue litigation with her disability insurer with all due diligence," and regularly inform Michael of the status of the case. The judgment further provided that "the issue of spousal maintenance may be reviewed" after completion of litigation, and also stated that any funds Chantal received from the litigation "shall be deemed an asset that is subject to division."

¹ Two children have emancipated and the third child is a high school senior.

In support of Chantal's claim against the disability insurer, Michael wrote a letter to the insurer, in which he stated that before her illness Chantal was "extremely active," but her illness had caused her to be "extremely limited in all aspects of her life, and [she] suffers setbacks every time she attempts to push her way past it." In May 2006, Chantal received a \$111,000 lump-sum settlement payment from the insurer. In October 2006, the district court amended the 2005 judgment to reflect the parties' agreement that Michael would receive \$34,666 of Chantal's settlement.

Letters from Chantal's treating physician and the Social Security Administration establish that Chantal continues to suffer from muscle myopathy and receive Social Security disability benefits. Chantal's monthly Social Security benefit is \$2,539.80. According to Chantal's treating physician, Chantal's condition causes "rheumatologic symptoms" and disabling fatigue. Chantal's typical activities include maintaining the home, shopping for groceries and clothes, attending her children's sporting events, and volunteering at her daughter's elementary school. She also exercises, rides bike, and works in the garden, as recommended by her physician.

Chantal is currently in a "significant romantic relationship" with D.Y. Chantal and D.Y. own separate homes, are not married, and do not have a joint bank account, nor do they list each other as beneficiaries on retirement, investment accounts, or life insurance policies. Chantal's relationship with D.Y. includes a child, who was born in 2007. The child lives with Chantal, and D.Y. pays \$1,500 in monthly child support. The district court found that there is some evidence that Chantal and D.Y. "hold themselves out as a married couple." In an affidavit, Michael stated that Chantal and D.Y. wear wedding rings and take

vacations together. Also, in her written responses to Michael's discovery requests, Chantal admitted that D.Y. "resides at [her] home on a part-time basis." D.Y. has paid for repairs and improvements to Chantal's home, including a kitchen oven and replacement garage doors. In 2012 and 2015, D.Y. loaned Chantal \$10,000 and \$8,000, respectively, "towards payment of monthly living expenses." Chantal re-pays these loans at a rate of \$150 per month without interest. Additionally, D.Y. pays for Chantal's meals when they dine out.

Procedural History

Since the 2005 judgment, Michael has filed five motions to modify maintenance and/or compel discovery relating to maintenance. In 2008, Michael moved to compel disclosure of Chantal's medical records so he could establish that her health had improved and argue for a reduction in his maintenance obligation. The district court denied the motion, concluding that requiring disclosure of Chantal's medical records was contrary to the rules of civil procedure. The district court approved Chantal's proposal that she provide Michael with an annual medical update via physician letters and copies of her Social Security disability benefit statements. The district court found this to be a "reasonable compromise."

In March 2009, Michael filed a maintenance modification motion, arguing Chantal's health had improved and Chantal was cohabitating with D.Y. Michael alleged that Chantal impeded his ability to prove changed circumstances by refusing to disclose or authorize release of her medical records. Chantal responded, but Michael voluntarily withdrew the motion before the district court filed an order.

In November 2010, Michael filed a second modification motion, reasserting the same arguments he raised in the 2009 motion. While that motion was pending, Michael filed a separate motion to compel discovery, requesting Chantal's medical records, an independent medical examination of Chantal, and discovery relating to Chantal's finances. At a hearing, Michael voluntarily withdrew his modification motion and pursued only the discovery motion. In April 2011, the district court denied Michael's request for medical discovery but granted his request for financial discovery.

After receiving financial discovery, Michael filed a third modification motion reasserting the same arguments he raised in 2009 and 2010. In August 2011, the district court denied Michael's motion, finding that he had not shown a substantial change in circumstances. The district court found that Chantal's physician letters and Social Security disability benefit statements established that Chantal continued to be disabled. The district court also found no substantial change in Chantal's economic well-being because D.Y. provided only "sporadic" financial support. Michael did not appeal.

Between 2011 and 2014, neither party filed any motions. In October 2015, Michael moved to modify maintenance, reasserting the same two grounds raised in his previous modification motions. Michael also moved to compel an independent medical examination of Chantal, a deposition of Chantal's treating physician, responses to interrogatories relating to Chantal's health and finances, and a vocational evaluation of Chantal. In response, Chantal requested conduct-based attorney fees. The district court denied Michael's motions, finding that he did not establish a substantial change in circumstances

requiring maintenance modification. The district court also granted Chantal's motion, awarding her \$14,430.50 in conduct-based attorney fees. Michael appeals.

D E C I S I O N

I. Michael's motion to compel discovery

The district court has wide discretion in granting or denying discovery requests, and this court will not disturb the district court's order absent a clear abuse of discretion. *In re Comm'r of Pub. Safety*, 735 N.W.2d 706, 711 (Minn. 2007). In reviewing the district court's order, this court is limited to "determining whether the district court made findings unsupported by the evidence or [improperly applied] the law." *Id.* Minnesota favors liberal discovery in civil proceedings, therefore, courts construe the discovery rules broadly. *Id.* Generally, "parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party." Minn. R. Civ. P. 26.02(b).

The district court summarily denied Michael's discovery requests, relying on its April 2011 order. Michael argues that the district court abused its discretion because it denied his modification motion without allowing adequate discovery. We will examine Michael's discovery requests by grouping them into three categories.

A. Medical and vocational assessments under Minn. R. Civ. P. 35.01

When a party's physical or mental condition "is in controversy," the district court may order the party to submit to a physical or medical examination upon motion and good cause shown. Minn. R. Civ. P. 35.01. The "rule does not require that the party to be examined place his or her condition in controversy, but only that the condition be in controversy." *Wills v. Red Lake Mun. Liquor Store*, 350 N.W.2d 452, 454 (Minn. App.

1984) (quotation omitted) (analyzing request for a vocational assessment under rule 35.01). “The nature and extent of the showing that must be made to demonstrate ‘good cause’ under the rule differs from case to case, turning largely upon the nature of the examination sought.” *Haynes v. Anderson*, 304 Minn. 185, 189, 232 N.W.2d 196, 199 (1975). “The burden to show that the trial court abused its discretion in granting or denying an order for an adverse examination is an affirmative showing of prejudice.” *Higgins v. Lufi*, 353 N.W.2d 150, 155–56 (Minn. App. 1984), *review denied* (Minn. Oct. 11, 1984).

Chantal’s medical condition is “in controversy” under rule 35.01 because her health has disabled her from employment, which was expressly considered in the 2005 judgment, and thus became part of the baseline for the maintenance award.² But the district court found, and the record reflects, that Chantal’s permanent-maintenance award was not contingent on her disability. In fact, the dissolution judgment expressly states that Chantal’s permanent-maintenance award continues until her remarriage or death, whichever occurs first.

To obtain medical discovery, Michael was required to show good cause, and, on appeal, he must show he was prejudiced by the district court’s denial of his requests. Michael relies on *Wills v. Red Lake Municipal Liquor Store*, in which the district court ordered a personal-injury plaintiff to submit to a rule 35.01 vocational assessment. 350 N.W.2d at 455. But *Wills* merely stated that it is within the district court’s “broad

² We note that the 2005 judgment required Chantal to pursue a claim against her disability insurer for benefits. Michael submitted a letter to the insurer on Chantal’s behalf, in which he acknowledged the disabling effect of Chantal’s disability, and Michael received part of the resulting settlement.

discretion” to order a vocational or medical assessments. *Id.* at 454. We conclude that the district court did not clearly abuse its discretion in denying discovery.

B. Medical records, authorization for release of medical records, and deposition of treating physician under Minn. R. Civ. P. 35.03, .04

When a party affirmatively places his or her physical or mental condition into controversy, the party “waives any privilege that party may have in that action regarding the testimony of every person who has examined or may thereafter examine that party.” Minn. R. Civ. P. 35.03. We note that, unlike rule 35.01, which does not require affirmative action, rule 35.03 “requires that the person who has the medical privilege . . . affirmatively place” the condition in issue. Minn. R. Civ. P. 35.03, 1998 committee cmt. “A denial of an affirmative allegation by an opposing party is not an affirmative placing of the condition in issue and is not a ‘voluntary’ act by the person with the privilege.” *Id.*; *see also Muller v. Rogers*, 534 N.W.2d 724, 726 (Minn. App. 1995) (stating that a party may not waive medical privilege merely by responding to questions on cross-examination or defending a lawsuit). We recognize that a party’s waiver of medical privilege during the dissolution proceeding extends to the modification motion. *Atwood v. Atwood*, 253 Minn. 185, 191, 91 N.W.2d 728, 733 (1958).

Michael’s motion sought to depose Chantal’s treating physician, obtain Chantal’s authorization for release of her medical records, and supplement Chantal’s answers to interrogatories about activity level, prescription use, and medical treatments. *See* Minn. R. Civ. P. 35.04 (stating that party who waives medical privilege must provide “copies of all medical reports” and “written authority . . . to permit the inspection of all hospital and other

medical records,” and opposing party may not depose waiving party’s treating physician unless by court order for good cause shown). Michael argues that Chantal waived medical privilege because “[h]er medical condition was acknowledged in the [2005 judgment] and she has continued to support her request for continued spousal maintenance by submitting a letter from her physician each year.”

Michael’s arguments are without merit. In 2008, the district court rejected Michael’s argument that Chantal placed her health into controversy during the dissolution proceeding. The district court concluded that Michael’s waiver argument was an “expansive interpretation of the waiver of a medical privilege and the discovery process as a whole [and it] is imprudent under the Minnesota Rules of Civil Procedure.” After the 2008 discovery order, Michael voluntarily withdrew two modification motions in 2009 and 2010. *See Hicks v. Hicks*, 533 N.W.2d 885, 887 (Minn. App. 1995) (holding party waives claim to retroactive modification when party does not pursue motion in district court and is deemed to have abandoned it).

In 2011, the district court again denied Michael’s request for medical discovery, and upheld the 2008 “compromise” that was “carefully designed to uphold the rights of both [p]arties.” The 2011 discovery order became final when Michael failed to appeal the subsequent August 2011 modification motion within the applicable time period. Minn. R. Civ. App. P. 104.01 (providing a 60-day time period to appeal a final order); Minn. R. Civ. App. P. 103.03 (listing appealable orders); Minn. R. Civ. App. P. 103.04 (providing that this court “may review any order affecting the order from which the appeal is taken”); *Loo v. Loo*, 520 N.W.2d 740, 743–44 (Minn. 1994) (stating that parties to a dissolution may

always move to modify maintenance, but “decisions on other issues litigated and determined in the course of deciding such motions should be given preclusive effect”). Michael cannot now relitigate this issue.

Additionally, Chantal has not placed her health into controversy by defending Michael’s modification motions. Since the 2005 judgment, only Michael has moved for maintenance modification. Chantal provides an annual physician letter and copies of her Social Security disability benefit statements because the district court ordered her to do so in response to Michael’s 2008 discovery motion. Thus, Michael, not Chantal, has placed Chantal’s health into controversy, and Chantal has not waived her medical privilege. The district court did not abuse its discretion in denying Michael’s requests for medical records, authorization, and to depose Chantal’s treating physician.

C. Financial discovery

Michael’s remaining discovery claim pertains to his request for financial information, including “completion of [Chantal’s] answers to discovery,” which included requests for production of documents and responses to interrogatories. He references two affidavits he filed with his motion, which point “out specific instances of questionable financial activity” by Chantal. The record supports the district court’s decision to deny this additional financial discovery. Michael’s motion relied on information he obtained from Chantal’s financial records, which were produced during discovery. But Michael did not file these documents with his motion, and they are not contained within the appellate record. Minn. R. Civ. App. P. 110.01 (stating that appellate record is confined to documents and exhibits filed in district court). When bringing a motion in a family-law proceeding, it

is the moving party's burden to supply the court with all supporting documents. Minn. R. Gen. Pract. 303.02(a), 303.03(a)(1). "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). Accordingly, the district court did not abuse its discretion in denying additional discovery.

II. Spousal-maintenance modification

This court reviews a district court's decision to grant or deny modification of spousal maintenance for abuse of discretion. *Hecker v. Hecker*, 568 N.W.2d 705, 709–10 (Minn. 1997). The district court abuses its discretion if it makes findings unsupported by the evidence or misapplies the law. *Silbaugh v. Silbaugh*, 543 N.W.2d 639, 641 (Minn. 1996). This court reviews the district court's factual findings for clear error. *Antone v. Antone*, 645 N.W.2d 96, 100 (Minn. 2002). Factual findings are clearly erroneous if they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009) (quotation omitted). This court defers to the district court's credibility determinations, including its opportunity to weigh the evidence, which may be in affidavit form. *Knapp v. Knapp*, 883 N.W.2d 833, 837 (Minn. App. 2016).

Before a district court may modify a spousal-maintenance award, the moving party must provide "clear proof" that, since the maintenance obligation was established or last modified, a substantial change of circumstances has occurred that renders the award

unreasonable and unfair. Minn. Stat. § 518A.39, subd. 2 (2016); *Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987); *see also Kielley v. Kielley*, 674 N.W.2d 770, 779 (Minn. App. 2004) (“Unreasonable and unfair are strong terms which place upon the claimant a burden of proof more than cursory.” (quotation omitted)). There are eight statutory bases for a finding of changed circumstances, including, for example, “substantially increased or decreased gross income of an obligor or obligee” and “substantially increased or decreased need of an obligor or obligee.” Minn. Stat. § 518A.39, subd. 2(a).

When parties stipulate to spousal maintenance, the stipulation serves as a baseline “against which claims of substantial change are evaluated.” *Hecker*, 568 N.W.2d at 709. “[T]he district court considering the modification motion must appreciate that the stipulation represents the parties’ voluntary acquiescence in an equitable settlement.” *Beck v. Kaplan*, 566 N.W.2d 723, 726 (Minn. 1997). The supreme court has “cautioned the district court to exercise its considerable discretion carefully and only reluctantly when it is faced with a request to alter the terms of an agreement which was negotiated by the parties.” *Id.*

Michael argues that the district court abused its discretion in determining that he failed to establish a substantial change in circumstances based on Chantal’s improved health and her relationship with D.Y.³ We address each claimed basis for establishing changed circumstances.

³ Michael also argues that the district court erred because it failed to analyze the factors in Minn. Stat. § 518.552, subd. 2, for determining the amount of a maintenance award. But a

A. Chantal's health

The district court found that Chantal's "health has not improved to the point where she can support herself financially." The district court's determination is supported by letters from Chantal's physician stating that she continues to suffer from muscle myopathy, and by Social Security disability benefit statements showing that Chantal continues to qualify for federal disability benefits. *See McConnell v. McConnell*, 710 N.W.2d 583, 586 (Minn. App. 2006) ("While the social-security disability determination is not 'conclusive' evidence for purposes of determining spousal maintenance, it is reasonable evidence supporting [a spouse's] claim that he is unable to become self-supporting."). Because Chantal's disability existed at the time of the 2005 judgment and Michael offered no evidence of improvement, the district court did not abuse its discretion in determining that Michael did not establish a substantial change in circumstances.

Michael challenges the district court's decision to credit the physician letters because they used identical language each year. We reject this challenge because Chantal's condition is chronic, treatment is ongoing, and the "sameness" of the physician letters reflects the absence of a change in Chantal's medical condition. *See Loveland v. Kremer*, 464 N.W.2d 306, 309 (Minn. App. 1990) (stating that dissatisfaction with physician credentials and report was insufficient to establish good cause for independent medical examination in personal-injury lawsuit). Moreover, the physician's credibility is buttressed

district court is not required to analyze the section 518.552 factors if it finds that the petitioner has not established a substantial change in circumstances. *Rapacke v. Rapacke*, 442 N.W.2d 340, 343 (Minn. App. 1989).

by Chantal's award of federal disability benefits. The district court's credibility determination is supported in the record and we will not disturb it on appeal. *Knapp*, 883 N.W.2d at 837.

Michael claims that the district court clearly erred when it found that wife's health had not improved because he provided "ample evidence of [Chantal's] active lifestyle." Michael stated in an affidavit that, based on his review of Chantal's discovery responses and "upon information and belief, [Chantal] is traveling far more than she admits" and is "more active than she claims."⁴ Michael offered nothing to support his claims regarding travel and physical activity. *See Kielley*, 674 N.W.2d at 779 (stating that proof of a substantial change in circumstances must be more than "cursory"). On this record, the district court did not clearly err in finding that Chantal's health has not improved since the 2005 judgment.

Michael also contends that the district court erred in failing to apply *Passolt v. Passolt*, which recognized that a spouse receiving permanent spousal maintenance may have an obligation to increase her earning power through retraining. 804 N.W.2d 18, 24 n.2 (Minn. App. 2011), *review denied* (Minn. Nov. 15, 2011). We conclude that *Passolt* has no bearing on our analysis in this appeal. In *Passolt*, the parties contested spousal maintenance. In contrast, Michael stipulated that Chantal should receive permanent maintenance; this stipulation was negotiated and represented a compromise of all disputes.

⁴ Michael's affidavit disputed how many vacations Chantal took in 2013 through 2015, and pointed out that Chantal "was able to go through a planned pregnancy" with D.Y. Finally, Michael's affidavit claimed that Chantal "sells extensively on eBay," registered to run a race, and "can do everything except be employed."

Beck cautions in favor of careful appreciation of the dissolution terms that these parties negotiated.

Because Chantal was disabled at the time of the 2005 judgment, and the record supports the district court's determination that Chantal's condition has not substantially changed, the district court did not abuse its discretion refusing to conclude there was a substantial change in circumstances arising from a change in Chantal's health.

B. Chantal's relationship with D.Y.

Michael argues that the district court abused its discretion in determining that Chantal's relationship with D.Y. did not establish a substantial change in circumstances. A maintenance-recipient's nonmarital relationship "does not constitute, simply by reason of the nature of the relationship, sufficient ground for the termination of alimony." *Abbott v. Abbott*, 282 N.W.2d 561, 566 (Minn. 1979). But when the relationship contributes to the spouse's economic well-being and reduces the spouse's need for maintenance, modification is appropriate. *Id.*

Michael argues that the district court erred because it did not apply the four factors that the legislature recently adopted to determine whether cohabitation warrants maintenance modification. Minn. Stat. § 518.552, subd. 6. But the four factors do not apply to Michael's motion. The amendment enacting subdivision 6 did not go into effect until August 1, 2016, well after Michael's modification motion. The amendment specifically states that it "applies to modification motions brought on or after that date." 2016 Minn. Laws ch. 132, § 1, at 1. In any event, subdivision 6 would not help Michael's position because the district court determined that Chantal and D.Y. are not cohabitating.

Michael also contends that the district court's cohabitation finding is clearly erroneous and emphasizes Chantal admitted that D.Y. "resides at [her] home on a part-time basis." But the record also establishes that Chantal and D.Y. own separate homes, have separate bank accounts, and do not list each other as beneficiaries on their life insurance policies or investment and retirement accounts. The district court also correctly noted that D.Y. has no legal obligation to support Chantal financially because they are not married. *Abbott*, 282 N.W.2d at 566 (stating that "[d]e facto or common-law marriages were specifically abolished by the legislature," and "[u]nless a license is obtained and proper solemnization observed," it contravenes the legislature's prohibition of common-law marriage to "impose support obligations on parties to nonmarital relationships"); *accord* Minn. Stat. § 517.01 (2016).

Moreover, the district court expressly considered Michael's evidence, noting "some evidence" establishes that Chantal and D.Y. hold themselves out as a married couple and Chantal "concedes that [D.Y.] has provided her with loans." But the district court found that Chantal and D.Y. "do not co-mingle funds," nor do they "enjoy the financial benefits of sharing a household." Also, the district court found that D.Y. provides only "sporadic" economic support to Chantal, including "nominal amounts of money and loans." The district court concluded that Chantal's relationship with D.Y. has not increased her economic well-being "to the point of a substantial change triggering a need for modification of maintenance."

Michael contends that the district court "summarily disregard[ed]" evidence he submitted to establish that Chantal's relationship with D.Y. has substantially increased her

economic well-being, including that D.Y. has paid for Chantal's home improvements and has loaned her \$18,000 over the course of the last four years. Michael also references Chantal's bank records that she provided during discovery, which he claims show that Chantal receives significant income from D.Y. and other sources. But Michael did not file Chantal's bank records in support of his modification motion. As discussed, it was Michael's burden to supply all supporting documents with his motion, and we are bound by the record on appeal. Additionally, a party seeking maintenance modification must present "clear proof" of a substantial change in circumstances. *Tuthill*, 399 N.W.2d at 232.

Michael asserts that the district court erred by failing to make specific findings of Chantal's expenses. But caselaw establishes that a district court need not make expense findings in determining a modification motion if it determines that the moving party has not established a substantial change in circumstances. *See generally Abbott*, 282 N.W.2d at 565 (remanding for calculation of reasonable expenses and amount of modified maintenance where moving party established substantial change in circumstances). We conclude the district court was not required to make expense findings.

In sum, because the district court did not abuse its discretion by ruling that Chantal's health and relationship with D.Y. did not establish a substantial change in circumstances, it did not abuse its discretion in denying Michael's modification motion.

III. Conduct-based attorney fees

This court reviews a district court's award of conduct-based attorney fees for an abuse of discretion. *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014). In a chapter 518 or 518A proceeding, the district court may require a party who "unreasonably

contributes to the length or expense of the proceeding” to pay attorney fees to the other party. Minn. Stat. § 518.14, subd. 1 (2016). The requesting party has the burden of establishing that the other party’s conduct contributed to the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001), *review denied* (Minn. Aug. 20, 2002). No showing of bad faith is necessary. *Id.* The district court must make findings explaining its award of conduct-based attorney fees. *Brodsky v. Brodsky*, 733 N.W.2d 471, 477 (Minn. App. 2007). Specifically, the district court must identify what conduct justifies the award and must determine that the conduct occurred during the litigation. *Geske*, 624 N.W.2d at 819.

Here, the district court decided to award conduct-based attorney fees to Chantal because Michael has “repeatedly filed motions against [Chantal] multiple times in the last nine years,” and has reasserted rejected arguments. The district court determined that Michael’s current modification motion “would have been wholly unnecessary had [he] considered the legal standards for modification in consultation with this Court’s previous orders on the issue.” Michael contends that the district court abused its discretion because it did not base its award on conduct from this proceeding, but rather punished him for his prior conduct, intending to deter future motions. Michael also argues that he had a good-faith basis for his motions. Michael does not contest the amount of the award.

This court recently held that “[a] motion for conduct-based attorney fees may be based on the opposing party’s pursuit of frivolous . . . claims.” *Baertsch v. Baertsch*, 886 N.W.2d 235, 239 (Minn. App. 2016). In these situations, “the motion for conduct-based attorney fees is not completely separate from the merits of the challenged claims.” *Id.*

Here, all of Michael's current arguments were raised in one or more prior motions. Michael has moved five times to either modify maintenance and/or compel medical discovery. Although he voluntarily dismissed two motions, Chantal incurred expenses in responding to all five motions. There are no new facts regarding Chantal's health that warranted Michael's most recent modification motion. Michael's argument regarding Chantal's relationship with D.Y. was not wholly without merit, but Michael pursued the motion despite being unable to provide the district court with any evidence of Chantal's improved economic well-being that would rise to the level of a substantial change in circumstances. Because the record supports the district court's decision to award conduct-based attorney fees, it did not clearly abuse its discretion.

Affirmed.