

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0792**

In re the Marriage of: Donald Wayne Leeke, petitioner,
Appellant,

vs.

Susan Lynn Webb Leeke n/k/a Susan Lynn Leeke,
Respondent.

**Filed April 24, 2017
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19AV-FA-12-1083

John D. Reddall, Kretsch Law Office, PLLC, Lakeville, Minnesota (for appellant)

Wayne A. Jagow, Jagow Law Office, P.A., Burnsville, Minnesota (for respondent)

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

UNPUBLISHED OPINION

LARKIN, Judge

In this spousal-maintenance dispute, appellant-husband argues that the district court
erred by determining that respondent-wife was not cohabitating under the terms of a

cohabitation clause in the parties' stipulated judgment and decree, and by awarding wife need-based attorney fees. We affirm.

FACTS

Appellant-husband Donald Wayne Leeke and respondent-wife Susan Lynn Leeke were married in 1997 and had two children during their marriage. The parties dissolved their marriage by stipulated judgment and decree in 2012. The judgment and decree included a cohabitation clause, which, if triggered, would suspend husband's stipulated spousal-maintenance obligation.

In March 2015, husband stopped making spousal-maintenance payments because he believed that wife was cohabitating with her fiancé, D.Z. Wife moved to hold husband in contempt of court based on his failure to pay spousal maintenance.

At an evidentiary hearing on the motion, husband testified that he had seen D.Z. at wife's home and at most of the children's extracurricular events, that his wife had seen D.Z. at wife's home or working out in a nearby gym, and that his children described spending time with D.Z. Wife testified that D.Z. was only at her home on Wednesday nights and weekends and that she was careful never to have him at her home more than four nights a week.

The district court determined that wife was not cohabitating under the terms of the parties' cohabitation clause and ordered husband to continue to pay wife \$5,000 per month in spousal maintenance as set forth in the parties' judgment and decree, and to pay his spousal-maintenance arrears by December 31, 2015. But the district court did not find husband in contempt of court, reasoning that he made "a good faith effort to comply with"

the terms of the judgment and decree. The district court also awarded wife need-based attorney fees of \$10,000.

Husband and wife moved for amended findings. The district court held a hearing on the motions and amended its previous order to include more detailed findings. But the district court did not otherwise change its order. Husband appeals.

D E C I S I O N

I.

Stipulated dissolution judgments are treated as binding contracts. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997); *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). “[I]f language [in a stipulated dissolution judgment] is reasonably subject to more than one interpretation, there is ambiguity.” *Halverson v. Halverson*, 381 N.W.2d 69, 71 (Minn. App. 1986). Absent ambiguity, it is generally not proper for a district court to interpret a stipulated judgment. *Starr v. Starr*, 312 Minn. 561, 562-63, 251 N.W.2d 341, 342 (1977). The meaning of an unambiguous provision “can be determined without any guide other than knowledge of the facts on which the language depends for meaning.” *VanderLeest v. VanderLeest*, 352 N.W.2d 54, 57 (Minn. App. 1984). “Whether a provision in a dissolution judgment and decree is clear or ambiguous is a legal question.” *Suleski v. Rupe*, 855 N.W.2d 330, 339 (Minn. App. 2014). We review issues of law de novo. *Haefele v. Haefele*, 621 N.W.2d 758, 761 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2011).

Husband contends that the district court erred in determining that wife was not cohabitating under the terms of the cohabitation clause in the parties' stipulated judgment and decree. That clause defines cohabitation as

having an unrelated adult male or female significant other reside with [wife] (1) for a period of 30 days or more, (2) for three or more periods of between 14 and 29 days in any 12 month period, or (3) for 6 or more periods of between 3 and 13 days . . . when the minor children are present in any 12 month period[.]

The parties disagree regarding the meanings of the terms “day” and “period” in the cohabitation clause. After considering the parties' arguments regarding the meanings of the terms, the district court found that the terms were “undefined and open to multiple interpretations,” suggesting ambiguity. The district court noted that husband argued for a literal application of the word “day” such that “any day upon which [D.Z.] is present at [wife's] home counts as a ‘day’ for purposes of determining whether cohabitation has occurred.” Husband also argued that “period” means something other than a continuous period of days. The district court rejected husband's interpretations of the terms because they are “not the common meaning that would ordinarily be assigned.”

When an undefined term is nontechnical, courts apply the common meaning of the term and may rely on dictionary definitions in doing so. *See Suleski*, 855 N.W.2d at 335 (applying the dictionary definition and common meaning of the term “primary residence” in a family-law dispute where the term was not defined in statute). The district court ultimately applied what it deemed to be “common,” dictionary definitions, defining “day,” in relevant part, as “[a]ny 24 hour period” and “period” as “[t]he completion of a cycle, a

series of events, or a single action.” The district court explained that “a period refers to a series of contiguous days, rather than some number of disparate days as [husband] suggests.”

Husband argues that the terms “day” and “period” in the parties’ cohabitation clause are unambiguous. We agree. These are commonly understood words, and their use in the judgment and decree is consistent with their common meanings. Although we agree that the terms are unambiguous, we reject husband’s proposed definitions because they are illogical and inconsistent with commonly accepted meanings.

Although husband does not explicitly define the term “day,” his arguments suggest that it means any portion of a 24-hour interval. Husband complains that under the district court’s definition, D.Z. must spend 24 continuous hours at wife’s house for the time to qualify as a day. Husband asserts, without citing the record, that the district court “explicitly endorse[d] the idea that any absence from the shared home by [wife’s] fiancé resets the clock and that any days that they reside together for anything less than 24 hours do not count.” Our review of the district court’s order does not reveal explicit endorsement of such a requirement, and we do not otherwise discern reversible error in the district court’s use of a dictionary to define “day” as a 24-hour period, which is a commonly accepted meaning.

Husband also argues that the district court erred in defining “period” to mean a series of consecutive days. Husband contends that under the cohabitation clause, the days in a period need not be consecutive. Husband’s proposed definition of “period” would render the word meaningless in the cohabitation clause. For example, if a “period” is not

composed of consecutive days, the first measure in the cohabitation clause, “for a period of 30 days or more,” would simply mean any 30 days. And the second measure, “for three or more periods of between 14 and 29 days in any 12 month period” could simply mean any 42 (or more) days (i.e., three 14-day periods) in a year, rendering it superfluous. As used in the cohabitation clause, the term “period” clearly means a series of consecutive days with a start and end date.

In sum, although we agree with husband that the terms “day” and “period,” as used in the cohabitation clause, are unambiguous, we reject his proposed definitions of those terms. The district court’s use of dictionary definitions to define the terms according to their commonly understood meanings was sound. Moreover, the district court did not err in determining that the evidence did not show that wife was cohabitating under those definitions. The district court’s decision is largely based on the testimony of husband, wife, and D.Z. The district court’s findings and order show that it considered all of the evidence presented, weighed the evidence, and assessed witness credibility. It is not this court’s role to reassess witness credibility or to reweigh evidence on appeal. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (stating that an appellate court defers to the district court’s credibility determinations); *Foster v. Foster*, 802 N.W.2d 755, 759 (Minn. App. 2011) (“[W]e are not permitted to reweigh the evidence when reviewing a district court’s decision to determine whether the court abused its discretion.”).

II.

A district court “shall” award attorney fees necessary to enable a party to carry on a proceeding if it finds that fees “are necessary for the good faith assertion” of that party’s

rights and “will not contribute unnecessarily to the length and expense of the proceeding,” “that the party from whom [they] are sought has the means to pay them,” and “that the party to whom [they] are awarded does not have the means to pay them.” Minn. Stat. § 518.14, subd. 1 (2016). We review an award of attorney fees for an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

Husband challenges the district court’s award of need-based attorney fees to wife, arguing that the district court’s findings are inadequate to support the award. Husband notes that “[c]onclusory 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 . . . is not fatal to an award where review of the order ‘reasonably implies’ that the district court considered the relevant factors,” “the district court ‘was familiar with the history of the case,’” and the district court “‘had access to the parties’ financial records.’” *Id.* (citation omitted).

In the underlying contempt proceeding, the district court also considered and rejected wife’s motion for modification of husband’s child-support obligation. As a result, the district court had access to the parties’ financial records and made detailed findings regarding the parties’ past and current incomes. Moreover, the district court’s order states that “[t]his Court has previously issued orders regarding support issues in this case,” suggesting that it was familiar with the history of the case. Under the circumstances, the district court’s order reasonably implies that it considered the relevant statutory factors. Therefore, on this record, the lack of specific findings is not fatal.

Husband further argues that the district court failed to consider and determine the amount of fees that were necessary for wife to litigate the spousal-maintenance dispute. Husband does not cite authority requiring a district court to make specific findings on this issue, and we do not deem the lack of specific findings fatal. Given the district court's familiarity with the history of the case, we are satisfied that the district court considered all of the statutory factors, including the amount of fees necessary to litigate the spousal-maintenance issues.

Husband also argues that the district court should not have awarded need-based attorney fees because "it ignore[d] *nearly 80% of [r]espondent's actual reported income* when determining that she does not have the ability to pay her [attorney] fees." However, as wife notes, that reported income was from 2014 when wife was receiving spousal maintenance of \$7,250 per month, accounting for \$87,000 of her \$92,663 gross income that year. In awarding wife need-based attorney fees, the district court explained that wife did "not have the means to pay her [attorney] fees, particularly because she has not received spousal maintenance in the last seven months." Under the circumstances, the district court did not abuse its discretion by determining wife had a need for attorney fees when those fees were awarded.

Lastly, husband notes that although the district court found the record sufficient to award wife need-based attorney fees related to the underlying contempt proceeding, it stated that there was "inadequate evidence in the record at this time regarding [wife's] need to receive need-based [attorney] fees" related to husband's motion for amended findings.

Husband suggests that this inconsistency constitutes reversible error. We disagree for the reasons that follow.

The district court's September 2015 order awarding wife need-based attorney fees was based on contempt proceedings in July 2015. The district court's March 2016 order denying wife's request for need-based attorney fees was based on the motion-to-amend proceedings in January 2016. Because the district court's September 2015 order for attorney fees was partly based on husband's failure to pay spousal maintenance and the same order required husband to continue his \$5,000 per month spousal-maintenance payment and to satisfy his arrears by December 31, 2015, it is not surprising that the district court would have wanted current information regarding wife's financial need in January 2016. In sum, the procedural history of the case explains the inconsistent findings regarding wife's need for attorney fees, and the findings are not a basis to reverse the attorney-fee award.

Affirmed.