

*This opinion will be unpublished and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
A17-1499**

In re the Marriage of:
Kerry J. Olson, a/k/a Kerry Ciardelli-Olson,
n/k/a Kerry J. Ciardelli, petitioner,
Respondent,

vs.

Scott Bradley Olson, co-petitioner,
Appellant.

**Filed June 18, 2018
Affirmed
Ross, Judge**

Carver County District Court
File No. 10-FA-05-604

Elizabeth M. Cadem, Erik F. Hansen, Burns & Hansen P.A., Minneapolis, Minnesota (for respondent)

Sean A. Shiff, Sean A. Shiff, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Klaphake,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10

UNPUBLISHED OPINION

ROSS, Judge

Divorced couple Kerry Ciardelli and Scott Olson stipulated to equally sharing the cost of their daughter's college education, and the district court included the stipulation in an order requiring equal contributions. The college's records during the final semester indicated that Olson paid \$128,564 to the college account while Ciardelli paid only \$80,253.50. Based on this disparity, Olson asserted that he had paid more than his half, and Ciardelli contended that she had paid more than her half based on payments she made directly to the child to cover college expenses. The district court found in favor of Olson, but it credited some of Ciardelli's direct payments to the child and ordered Ciardelli to pay Olson \$7,301.16 as an equalizer. In this appeal, Olson argues that the district court should not have credited Ciardelli's direct payments and that it also should have awarded him conduct-based attorney fees. The record supports the district court's factual determination as to the amount of Ciardelli's underpayment and its implicit rationale for not awarding attorney fees. We therefore affirm.

FACTS

Eight years after their 2005 divorce, Scott Olson and Kerry Ciardelli stipulated that each of them would pay half their daughter's expenses toward her undergraduate degree at Macalester College. The district court incorporated the stipulation into a contribution order. The order required each party to make \$17,812.50 payments to the college account each semester toward a total combined obligation of no more than \$285,000. The order contemplated that these payments would cover tuition, room, board, and \$600 monthly for

books and the child's discretionary spending. The order anticipated that the child would seek financial aid, which would reduce each party's share equally, and it required both parties to provide information necessary for her to do so.

Disputes arose during the child's education, bringing the case back before the district court in 2014. Ciardelli complained that Olson was not making his payments on time and Olson sought to suspend the obligation until the child exhausted all opportunities for financial aid. The district court observed that Olson had not met his obligation to provide documents necessary for the child to apply for financial aid, observed that the parties had failed to attempt to resolve their disagreements before involving the court, and amended its order to require both parties to make their college-account payments further in advance of the semester for which the funds were due.

In 2017 during the final semester of the child's undergraduate program, another dispute arose, the one that leads directly to this appeal. Olson had not made his college-account payment for the semester. He left the child a voicemail message expressing his doubt that Ciardelli had paid her share and announcing that he would not pay his share until Ciardelli produced evidence proving that she had paid hers. Ciardelli moved the district court to hold Olson in contempt for refusing to pay. She represented in an affidavit that, if she had not paid her share, the child would not have been able to complete school.

Olson subpoenaed the college for the child's account records, which revealed that he had made payments to the account totaling \$128,564 but that Ciardelli had paid only \$80,253.50. Olson moved the district court for an order requiring Ciardelli to pay him \$24,155.25 to equalize their contributions. He also sought conduct-based attorney fees

because of Ciardelli's representations, alleging that she had falsely indicated that she was current on her \$17,812.50-per-semester obligation. Ciardelli withdrew her motion for contempt but she argued against Olson's motion by contending that he never met his obligation to present tax documents necessary for the child to obtain financial aid and that no equalizer was necessary because she had provided funds directly to the child for expenses not covered by the child's college account but contemplated by the court's 2014 contribution order. Specifically, Ciardelli maintained that she had directly given the child \$9,855 for rent expenses, \$2,233.17 for utility expenses, and two large distributions totaling \$39,812.50 for other expenses like clothing, travel, phone, moving, and medical insurance. She, too, had sought conduct-based attorney fees. The child submitted an affidavit stating that Ciardelli paid her school fees, rent, living expenses, and medical expenses, and that Olson did not directly give her any funds.

The district court agreed with Olson that Ciardelli must pay him an equalizer. But it partially rejected Olson's argument that Ciardelli should be credited only for the amount she paid into the child's college account, reasoning that some of the child's expenses contemplated by the contribution order were not covered by the account. The court credited Ciardelli's non-account contributions of \$21,600 (the product of \$600 per month allowed for books and monthly discretionary spending for the nine-month school year multiplied by four years). By adding this \$21,600, the \$9,855 for rent expenses, and the \$2,233.17 for utility expenses to the \$80,253.50 that she had paid into the account, the district court found that Ciardelli had contributed a total of \$113,941.67 to the child's education, while Olson had contributed \$128,544. It therefore found that Olson had overpaid the child's college

expenses by \$7,301.16 and ordered Ciardelli to reimburse Olson that amount to equalize their contributions. The court denied both parties' competing motions for attorney fees.

Olson appeals.

DECISION

Olson argues that the district court abused its discretion by crediting Ciardelli with payments she made directly to the child and by failing to award him conduct-based attorney fees. Neither argument prevails.

We reject Olson's contention that the district court erroneously decided his contribution motion. Contribution is an equitable remedy that allows a person to compel another to contribute her share of an obligation assumed by both parties. *Kroona v. Dunbar*, 868 N.W.2d 728, 732–33 (Minn. App. 2015). A district court has broad discretion when fashioning an equitable remedy, and we will reverse only if the district court abuses that discretion. *State ex rel. Swan Lake Wildlife Ass'n v. Nicollet Cty. Bd. of Cty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011). The district court's order arising from the parties' agreement is indisputably equitable and obviously within the district court's discretion. Requiring a remedial contribution intended to enforce the order is therefore likewise indisputably equitable and within the district court's discretion.

Olson maintains that the evidence does not support the district court's factual finding that Ciardelli actually made the payments she claimed to have made directly to the child. We will not disturb a district court's factual finding unless it is clearly erroneous, meaning that the record contains no reasonable evidence supporting the finding. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). The reasonable evidence that supports

the challenged finding includes Ciardelli's affidavit testimony—buttressed by the child's corroborative affidavit—stating that she gave the child funds to cover rent, housing, and all living expenses for the child's final two years of college. The district court found that these affidavits were truthful and accurate. Although Olson argued that Ciardelli failed to prove that the money she gave the child was not merely the child's funds recycled through a joint account belonging to Ciardelli and the child, Olson provided no evidence supporting this theory, and the district court rejected it as a matter of fact. On appeal we do not substitute our own findings in place of the district court's because we do not reweigh the evidence or reassess the factfinder's credibility determinations. *See Vangsness v. Vangsness*, 607 N.W.2d 468, 475 (Minn. App. 2000). Our only question is whether the evidence supports the district court's findings. For the reasons described, we hold that it does.

We also reject Olson's argument that the district court improperly denied his request for attorney fees based on Ciardelli's conduct. We will reverse a district court's decision denying a motion for conduct-based attorney fees under Minnesota Statutes § 518.14 only if the court abused its discretion. *Kronick v. Kronick*, 482 N.W.2d 533, 536 (Minn. App. 1992). Olson argues that the district court abused its discretion by denying him his requested conduct-based attorney fees because Ciardelli knowingly brought a frivolous contempt motion challenging his refusal to pay his share for the child's final semester of college. Olson contends that Ciardelli's contempt motion was frivolous because it rested on Ciardelli's false representations that she had made payments and because she

intentionally concealed information that the child had received financial aid. The argument suffers from three difficulties.

The first difficulty with Olson's argument is that, although the statute *allows* a district court to award attorney fees against a party who unreasonably contributes to the length or expense of the proceeding, the statute does not *require* the court to do so. Minn. Stat. § 518.14, subd. 1 (2016). Olson cites no authority for his proposition that these circumstances "require that Respondent pay Appellant's legal fees and costs." The second difficulty is that Olson does not establish (or even assert) that Ciardelli's motion in fact contributed to the length or expense of the proceeding. Indeed, on this record, we have no basis even to speculate that the proceeding was more costly because of the contempt motion; answering Olson's motion required the district court to determine the amount each party contributed, and this determination presumably involved the same factual and legal issues with or without the contempt motion. The third difficulty is that Ciardelli's cited failure to follow the terms of the contribution order did not prevent Ciardelli from seeking redress for Olson's independent failure to follow the order. He had not paid for the child's final semester two months after the deadline imposed by the order, and he had announced that he was unilaterally imposing a condition on his compliance. This behavior supports a colorable claim that Olson engaged in contemptuous conduct.

The district court summarily denied each party's request for conduct-based attorney fees without explanation. Olson claims the lack of findings constitutes an abuse of discretion. We have said that findings on a party's motion for conduct-based attorney fees are necessary to permit appellate review. *Kronick*, 482 N.W.2d at 536. But we have also

said that a remand is unnecessary if we can infer findings from the district court's conclusions. *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996). And a district court judge's familiarity with a case is a relevant factor in determining whether the district court made implicit findings on a request for attorney fees. *See Gully v. Gully*, 599 N.W.2d 814, 825–826 (Minn. 1999). The district court judge who decided Olson's request for attorney fees had previously decided a motion for attorney fees arising from Ciardelli's earlier motion for contempt in August 2014, and the judge was fully aware of the parties' litigation behavior. We can infer that the district court either found that Olson had not proved that Ciardelli's motion significantly impacted the process or cost or that Ciardelli's motion was founded on reasonable grounds despite her own apparent violations.

Affirmed.