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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0694**

In re the Marriage of:

Lakmini Yamuna Herath, petitioner,
Respondent,

vs.

Susantha Herath,
Appellant.

**Filed June 3, 2019
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-FA-15-7094

Farhan Hassan, Courtney E. Latcham, Clausen & Hassan, LLC, St. Paul, Minnesota (for respondent)

Kathryn A. Graves, Jaime Driggs, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Halbrooks, Judge;
and Larkin, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

After more than 20 years of marriage and following lengthy dissolution proceedings, the marriage of appellant Susantha Herath (husband) and respondent Lakmini

Herath (wife) was dissolved. In its judgment and decree, as modified by several post-dissolution orders, the district court found husband to have dissipated certain marital assets and accounted for the dissipation in its marital-property distribution, imposed a property-equalizer payment on husband and set a schedule for that payment, ordered husband to acquire life insurance for the benefit of wife, and ordered husband to pay wife permanent spousal maintenance. Husband challenges these obligations on various grounds. In a cross-appeal, wife challenges the district court's refusal to award her attorney fees. We affirm.

FACTS

Husband and wife were married in 1993. In early 2015, wife petitioned to dissolve the marriage. Following disputes over discovery, wife moved to compel responses. Consecutive rounds of supplementation and claims of deficiency followed; wife's demands also expanded somewhat to encompass documents supporting husband's deposition testimony.

The district court's initial scheduling order called for the completion of discovery by January 1, 2016, with a trial date in June 2016. That schedule was not followed. In February 2016, wife moved the court to join husband's brother, to compel husband "to completely answer" wife's interrogatories and requests for production, and for conduct- and need-based attorney fees. Further discovery motion practice continued into March.

In a May 2016 order, the district court denied wife's motions for joinder and for conduct-based attorney fees but granted her motions to compel discovery on 16 specific matters and for need-based attorney fees. It also denied husband's request for conduct-based attorney fees.

A two-day trial took place in February 2017. In June 2017, the district court issued its findings of fact, conclusions of law, order for judgment, and judgment and decree. It found that husband had gross monthly income of \$15,995 and reasonable monthly living expenses of \$5,875 and that wife had a stipulated-to gross monthly income of \$2,063 and reasonable monthly expenses of \$3,925. The court awarded wife \$1,862 per month in permanent spousal maintenance.

The district court also found that husband had dissipated nearly \$400,000 in marital assets by transferring cash to his one of his brothers and two other people. This sum represented transfers over the course of 15 years. The district court found that the transfers were “in contemplation of divorce.” The district court’s findings supporting this determination included that husband had admitted to thinking about divorcing wife as early as 2001 or 2002, that husband’s explanations for the transfers were unpersuasive or contradicted his other testimony, and that wife neither knew of nor consented to the transfers.

The district court also made findings regarding the parties’ marital interests in three pieces of real estate. The real properties were: 2716 Edward—the home that the parties lived in until the dissolution was final and that was deeded to husband’s brother; 1605 25th—a property deeded to husband and his brother; and 114 Camelot—a property jointly owned by husband and three other members of his family, in which he had a one-third interest. The court found that the parties did not have a marital interest in 2716 Edward but did have a marital interest in one-half of 1605 25th and in one-third of 114 Camelot. It

awarded these marital interests to husband, subject to a marital lien securing a property equalizer to wife.

The district court reserved making findings on several issues because it could not determine, on the evidence submitted, what the value of certain property was as of December 31, 2016, the valuation date. Specifically, it reserved the division of debts, the amount and terms of a property-equalizer payment, and the terms of marital liens. It also reserved the issue of any award to wife of need- or conduct-based attorney fees. The court instructed the parties to submit additional information so that it could determine these reserved matters.

Based on the additional information, the district court supplemented its June order in October 2017. The district court ordered a property-equalizer payment to wife, to be paid in quarterly installments. The court limited wife's marital lien on husband's property interests to the amount owing on the property equalizer until it was paid off. It also required husband to secure the property equalizer and his maintenance obligation with a life-insurance policy of \$500,000, to be reduced to \$250,000 when the equalizer was paid off. The district court declined to award need-based attorney fees to wife because it found that wife would receive sufficient assets in the property equalizer to pay her fees. And it declined to award wife conduct-based attorney fees because it found that husband's conduct had not unreasonably contributed to the length or expense of the proceeding.

Both parties moved for amendment of the district court's findings of fact, conclusions of law, and order. Husband also submitted an amended motion for amendment, accompanied by an affidavit stating that he could not afford the life insurance. The district

court declined to consider husband's amended motion because it was untimely. The district court granted in part and denied in part the parties' motions.

In its order, the district court amended the property distribution, instructing that husband's retirement account be divided equally between the parties. It also adjusted the dissipated assets downward to fix a double-counting error—specifically, a sum that was paid to husband's brother had been treated as evidence that certain property was in fact marital property, but that sum had also been counted as dissipated. The district court reduced the dissipated assets by that sum. Based on these adjustments to the property distribution, the district court amended the property-equalizer amount and payment plan, ordering husband to pay a total equalizer of \$234,100 by making an initial payment of \$34,900, followed by quarterly installments of \$12,500 until the full balance was paid. The district court also amended certain findings of fact to reflect these changes and to clarify its order. Finally, the district court reduced the life-insurance requirement to \$250,000 until the property-equalizer obligation was satisfied and \$50,000 thereafter. The amended life-insurance requirement did not mention husband's maintenance obligation.

Husband appealed, arguing that the district court clearly erred in finding that his transfers of cash constituted dissipation of marital assets and abused its discretion in setting the property-distribution plan, requiring life-insurance coverage, and awarding spousal maintenance. Wife cross-appealed, arguing that the district court abused its discretion by awarding her neither need- nor conduct-based attorney fees.

DECISION

I. The district court did not clearly err in finding dissipation of marital assets.

Parties to a dissolution owe each other “a fiduciary duty . . . for any profit or loss derived by the party, without the consent of the other, from a transaction or from any use by the party of the marital assets.” Minn. Stat. § 518.58, subd. 1a (2018). The district court may attribute dissipated assets to the party who “transferred, encumbered, concealed, or disposed of” them. *Id.*

Under Minnesota statute, dissipation occurs when “a party to a marriage, without consent of the other party, has in contemplation of commencing, or during the pendency of, the current dissolution, separation, or annulment proceeding, transferred, encumbered, concealed, or disposed of marital assets except in the usual course of business or for the necessities of life.” *Id.*; see, e.g., *Baker v. Baker*, 753 N.W.2d 644, 653 (Minn. 2008) (quoting the statute when describing the test for dissipation); *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 698 (Minn. App. 2010) (same), *review denied* (Minn. Nov. 16, 2010). The parties agree that the statute establishes a four-element test for determining whether dissipation has occurred: (1) a transfer or disposition of marital assets; (2) without the other party’s consent; (3) “in contemplation of commencing . . . the current dissolution . . . proceeding; and (4) the transfer or disposition was not “in the usual course of business or for the necessities of life.”

Whether a party has dissipated marital assets is a question of fact. See Minn. Stat. § 518.58, subd. 1a (“If the court *finds* . . .” (emphasis added)). Appellate courts review a district court’s factual findings for clear error, viewing the evidence in the light most

favorable to the district court's findings and reversing only if the record "requires the definite and firm conviction that a mistake was made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Husband does not dispute the district court's finding that he transferred or disposed of marital assets or the finding that he did not have wife's consent. Rather, husband argues that the district court clearly erred by finding that the transfers were in contemplation of commencing dissolution proceedings and by finding that the transfers were not in the usual course of business.

A. Contemplation of commencing dissolution proceedings

Husband relies on two facts to argue that the district court clearly erred in finding that he made the transfers in contemplation of dissolution. These facts are, first, that wife, and not he, commenced the dissolution proceeding and, second, that the transfers began 15 years before the dissolution proceeding. Husband argues that it is unreasonable to conclude that he was engaged in a 15-year scheme aimed at reducing the property available for division, while simultaneously acquiring income and property that would be subject to division in the event of a dissolution, all while waiting for his wife to commence dissolution proceedings against him. The only published caselaw husband cites for this proposition is *Bollenbach v. Bollenbach*, 175 N.W.2d 148, 155 (Minn. 1970), which he quotes for its statement that the purpose of the dissipation statute is to prevent parties from "subvert[ing] the orderly processes of the courts by concealing, dissipating, or misusing assets . . . in

anticipation of [dissolution] so as to reduce the property available for division.”¹ But neither of the facts he cites rules out the possibility that he was acting in contemplation of commencing dissolution proceedings.

First, this court has recognized that a party who does not initiate a dissolution may nonetheless dissipate assets before the dissolution proceeding begins. *Risk*, 787 N.W.2d at 694, 698 (declining to disturb the district court’s implicit finding that the non-initiating party to a dissolution proceeding had dissipated assets in contemplation of commencing a dissolution proceeding before the initiation of the dissolution). Second, *Bollenbach* does not support husband’s argument. Husband argues that because it would be irrational to describe the totality of his conduct since 2001 or 2002 as a plan to cheat wife in dissolution, nothing that he did during that period can be properly understood as done in contemplation of commencing dissolution proceedings. *Bollenbach* says that the purpose of the dissipation statute is to prevent parties from hiding assets to avoid division—it does not require the singleness of purpose that husband argues is absent here. 175 N.W.2d at 155. Nor does any case interpreting the present statute suggest that singleness of purpose is required. Given husband’s admitted contemplation of dissolution, his inability to produce any documentary evidence of his purported debt to third parties, and the unpersuasiveness—as found by the district court—of his testimony about the transfers, it

¹ *Bollenbach* concerns dissipation under the common law; it predates enactment of the dissipation statute. Compare 1991 Minn. Laws ch. 266, § 5, at 1197 (adding dissipation to statutory law in 1991) with *Bollenbach*, 175 N.W.2d at 155 (decided in 1970). The extent to which *Bollenbach* illuminates the meaning of the statute is thus questionable, but, in any event, as we discuss below, *Bollenbach* does not support husband’s position.

was not clearly erroneous for the district court to find that husband dissipated assets in order to conceal those assets if his wife chose to commence dissolution proceedings against him. Thus, husband has not shown that the district court clearly erred in finding that husband made the transfers in contemplation of commencing dissolution proceedings.

B. Usual course of business

Husband also argues that the district court's finding that the transfers were not in the usual course of business is clearly erroneous because it is inconsistent with two other findings of the court—specifically, that husband and his brothers “shared and intermingled funds and investments in real estate” and that they “transferred funds and ownership of assets between them as necessary to suit each other’s interests and purposes, to include this dissolution proceeding.” Husband argues that, because the district court found that he and his brothers routinely shifted the ownership of intermingled assets among themselves, any transfers were in the ordinary course of business and were not “solely for the purpose of dissipating marital assets in contemplation of divorce.” But this argument misstates the district court’s findings in two ways.

First, the district court did not hold that the transfers were “solely” intended to dissipate marital assets, nor was it required to—dissipation can have a purpose other than dissipation itself. In *Carrick v. Carrick*, 560 N.W.2d 407, 409, 413 (Minn. App. 1997), a wife admitted that she cashed certain certificates of deposit, withdrew money from accounts, and took two trips to Las Vegas for gambling purposes. Gambling and losing marital assets was held to constitute dissipation, even though gambling is not an activity that one undertakes solely to lose money. Similarly, in *Baker*, payment of legal fees with

marital funds was deemed to be dissipation, even though it was not done “solely” to dissipate the assets but, presumably, to pay off the fees. 753 N.W.2d at 653-54. Even if husband is correct that his payments to his brother were not solely intended to make marital funds unavailable to wife, that fact is not fatal to the finding of dissipation.

Second, the district court did not find that the brothers’ transfers among themselves were “in the usual course of business”; it simply found that the brothers made transfers with some degree of regularity. Under the common law, expenditures were in the usual course of business if they did not “conceal, squander or misuse marital assets.” *Volesky v. Volesky*, 412 N.W.2d 750, 753 (Minn. App. 1987). In one recent case, a dissenting judge of this court, discussing an issue not reached by the majority, indicated that expenditures are in the usual course of business within the meaning of the statute if they are made for “legitimate” reasons. *Kremer v. Kremer*, 889 N.W.2d 41, 61 (Minn. App. 2017) (Hooten, J., dissenting). It is self-evident that transfers intended to conceal the true ownership of assets are not made for “legitimate” reasons. Such transfers do not become “the usual course of business” merely because they are done consistently or over a long period of time, or because not all of the transfers were intended to conceal marital assets. Husband has not shown that the district court clearly erred in holding that husband’s transfers were not in the usual course of business.

Because neither of the district court’s findings on the challenged aspects of dissipation is clearly erroneous, the district court did not clearly err in finding that husband had dissipated marital assets.

II. The district court's property division was not an abuse of discretion.

District courts have broad discretion over the division of marital property in a dissolution “and will be reversed only for a clear abuse of discretion.” *Reynolds v. Reynolds*, 498 N.W.2d 266, 270 (Minn. App. 1993). Husband argues that the district court abused its discretion in distributing the parties’ marital property because the plan created a large equalizer payment that he lacks the liquidity to pay and the district court did not account for the costs of liquidating the property he was awarded.²

A district court must consider the tax consequences of a property-distribution plan if “the sale of real estate ‘is required or is likely to occur within a short time after the dissolution.’” *Reynolds v. Reynolds*, 498 N.W.2d 266, 271 (Minn. App. 1993) (quoting *Aaron v. Aaron*, 281 N.W.2d 150, 153-54 (Minn. 1979)). Similarly, if a district court’s order in effect requires a party to reallocate assets in a way that incurs taxes, the effects of those taxes must be accounted for. *See Curtis v. Curtis*, 887 N.W.2d 249, 250, 257 (Minn. 2016) (remanding where the district court refused to award spousal maintenance because the property division, if converted into income-producing property, would meet the needs of the party seeking maintenance but did not calculate the tax costs of such a conversion).

² Husband also argues that the district court’s property distribution was an abuse of discretion because the court ordered him to pay a property equalizer of \$234,100. If the terms of the court’s order are added up, he is required to pay \$234,900. But the apparent typographical error in the first installment—it was likely intended to be \$34,100 instead of \$34,900—does not necessarily result in husband paying more than he owes. The order requires payment “until the full balance has been paid.” The extra \$800 paid up-front may be able to be subtracted from the final equalizer payment. Even if the error actually requires husband to pay \$800 more than he should, that error is de minimis and not a basis for remand. *See Risk*, 787 N.W.2d at 693-94 & n.1 (refusing to remand for correction of a \$400 error with respect to a property valued at \$99,000).

Husband argues that the property division effectively required him to liquidate the real estate he was awarded and that the district court's failure to consider whether he could afford the payments it ordered without liquidating real estate was an abuse of discretion. Husband identifies the financial obligations that he claims limit his ability to pay the equalizer: \$1,862 per month in maintenance, \$5,775 for his own living expenses, \$4,167 per month for the equalizer payment, and "expensive life insurance coverage." But husband does not identify his claimed net income. And husband does not appear to have ever laid out before the district court the relationship between his income and the costs imposed on him by the district court's plan. He argued to the district court that his gross income was reduced by his obligation to pay taxes, maintenance, and marital debt, but he did not actually calculate his income and expenses. There is therefore no factual basis on which to conclude that husband can or cannot afford the equalizer payment without selling real estate. *See Hafner v. Hafner*, 406 N.W.2d 590, 592-93 (Minn. App. 1987) (declining to reverse based on asserted costs of sale where one party was awarded real estate and the other was awarded a property equalizer, because no evidence was presented to the district court whether the property equalizer was affordable).

Husband has not shown that the district court abused its discretion in refusing to amend the property-distribution equalizer payment plan.

III. The district court did not abuse its discretion by requiring life insurance as security.

Husband argues that the district court abused its discretion in two ways when it required him to secure the property equalizer with life insurance: first, by not limiting the

required amount of insurance to the outstanding amount of the equalizer and, second, by not evaluating the cost of the insurance.

A. Required amount of insurance

The district court's judgment requires that husband maintain a life-insurance policy with a face value of at least \$250,000, with wife as the sole irrevocable beneficiary "for as long as he owes an obligation to pay the property equalizer payment." Once the equalizer is paid in full, husband is required to maintain life insurance of \$50,000 for wife; this smaller policy is not explicitly tied to any of husband's other obligations. Husband argues that the district court abused its discretion by not limiting the insurance obligation to the amount of the property equalizer that remains owing as the equalizer is paid down.

A requirement that a party provide security against nonpayment of the property settlement is "an inherent part of the property division." *Landwehr v. Landwehr*, 380 N.W.2d 136, 140 (Minn. App. 1985). District courts have broad discretion over marital property divisions; we will not reverse the district court's division of marital property absent an abuse of that discretion. *Chamberlain v. Chamberlain*, 615 N.W.2d 405, 412 (Minn. App. 2000). So long as the district court's division of marital property has "an acceptable basis in fact and principle," we will affirm that division. *Walswick-Boutwell v. Boutwell*, 663 N.W.2d 20, 22 (Minn. App. 2003) (quotation omitted).

We conclude that the life-insurance obligation is justified by two separate rationales. The first is that \$200,000 of the life-insurance policy is intended to secure husband's obligation to pay wife a property equalizer. This purpose is apparent for two related reasons. First, once the property equalizer is fully paid, the life-insurance obligation is

reduced by \$200,000. Second, the district court's payment plan for the property equalizer begins with husband paying wife \$34,900—such a payment will bring the amount owing to almost exactly \$200,000, aligning the starting value of the life insurance with the amount husband owes. We do not see an abuse of discretion in requiring husband to maintain \$200,000 of life insurance until the equalizer is fully satisfied. Although the district court's order does have the potential for creating a windfall for wife (if husband dies after having paid some, but not all, of the equalizer), it is not unreasonable for the district court to incentivize husband's prompt payment of his obligation by imposing this burden.

The second rationale for the life-insurance obligation is that the remaining \$50,000 after the equalizer is paid is to secure husband's spousal-maintenance obligation. The district court has authority to order security for maintenance payments. Minn. Stat. § 518A.71 (2018). While the use of life insurance to provide such security was once limited to exceptional cases, that test has been eliminated. *Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007), *review denied* (Minn. Aug. 21, 2007). Courts now look to the effect of a loss of maintenance on a maintenance obligee's ability to self-support when determining whether to require life insurance as security. *See id.* at 635-36 (holding that the district court abused its discretion by not requiring life insurance to secure maintenance for a 52-year old obligee with a high-school degree, limited work experience, and expected income of \$14,872 per year).

Husband disputes that the \$50,000 insurance requirement is intended to secure spousal maintenance, arguing that, because the district court deleted a reference to his maintenance obligation when amending its order, the \$50,000 must not be tied to

maintenance and must simply be intended as a windfall for wife. But the only reasonable interpretation of the order is that the remaining \$50,000 of husband's life-insurance obligation is tied to his maintenance obligation, because that is the financial obligation remaining after the equalizer is paid. On this particular record, we conclude that the deletion of the reference to spousal maintenance from the previous order does not undermine this conclusion. The district court redlined its post-trial order, identifying the changes it was making to its previous order—deletions were struck through, additions were underlined. But the language connecting the life-insurance obligation to husband's maintenance obligation simply disappeared, suggesting that its deletion may have been unintentional. Moreover, neither party was objecting to the fact that the order required husband to secure his maintenance obligation with life insurance, so the district court had no apparent reason to reconsider that aspect of its order. Thus, despite the absence of language explicitly connecting the remaining \$50,000 insurance obligation to husband's maintenance obligation, we conclude that the additional \$50,000 life-insurance obligation continues to be tied to husband's obligation to provide maintenance to wife.

B. Cost of insurance

Husband also argues that the district court abused its discretion by failing to account for the cost of supplying life insurance. When a district court imposes a life-insurance obligation, the supreme court has suggested that a district court should make factual findings as to the obligor's insurability and the cost of insurance. *Lee v. Lee*, 775 N.W.2d 631, 642-43 (Minn. 2009) (stating, in dicta, that "[i]nsurability and cost of insurance seem to us to be significant facts in determining . . . the propriety of an insurance requirement").

But husband did not argue to the district court that the cost of life insurance was prohibitive except in his amended motion for amended findings of fact, which was untimely and thus not considered by the district court. And husband presented no evidence of the cost of life insurance except in an affidavit accompanying that untimely amended motion. We are limited to considering “only those issues that the record shows were presented [to] and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). Thus, the question of the cost of the insurance is not properly before this court, and we decline to address it. Further, in his timely original motion for amended findings, husband himself argued that \$250,000 was an appropriate level at which to set his life-insurance obligation. If we were to address the cost of the insurance we would, on this record, conclude that the district court did not abuse its discretion.

IV. The district court did not abuse its discretion in determining the amount and terms of maintenance.

Husband’s final argument on appeal is that the district court abused its discretion in awarding spousal maintenance, first, because it is too much for husband to afford and, second, because the award does not automatically terminate upon wife’s remarriage.

On appeal from an award of spousal maintenance, this court reviews whether the district court’s maintenance award was an abuse of its “wide discretion.” *Chamberlain*, 615 N.W.2d at 409. A district court abuses its discretion if it draws “a clearly erroneous conclusion that is against logic and the facts on record.” *Id.* (quotation omitted).

A. Husband's ability to pay

Husband argues that the district court abused its discretion by awarding maintenance based on husband's gross income, rather than calculating his net income.

When deciding whether to award spousal maintenance, the district court must consider "all relevant factors including: . . . the ability of the spouse from whom maintenance is sought to meet needs while meeting those of the spouse seeking maintenance." Minn. Stat. § 518.552, subd. 2 (2018). "In order to determine ability to pay, the court must make a determination of the payor spouse's net or take-home pay." *Kostelnik v. Kostelnik*, 367 N.W.2d 665, 670 (Minn. App. 1985), *review denied* (Minn. July 26, 1985). However, "the district court is not required to make specific findings on every statutory factor if the findings that were made reflect that the district court adequately considered the relevant statutory factors." *Peterka v. Peterka*, 675 N.W.2d 353, 360 (Minn. App. 2004).

Here, the district court found that husband had the ability to pay maintenance but did not specifically calculate husband's net pay. The district court's findings and the evidence in the record nonetheless reveal that the district court did adequately consider husband's ability to pay. When finding that husband had the ability to pay, the district court referred back to its findings of fact regarding spousal maintenance. In those findings, the district court specifically calculated that husband had gross monthly income of \$15,995. While this is not the same as net income, husband neither introduced nor provided to wife any evidence of his net income, but only provided 11 months of paystubs. Significantly, in the same set of findings from which it concluded that husband was able to support wife,

the district court noted that husband had claimed monthly expenses totaling \$13,938. While the district court adjusted husband's claimed monthly expenses downward, it would not be unreasonable for the court to have concluded that the amount that husband claimed as his monthly expenses was lower than his actual net income.

Before this court, husband now argues that he has insufficient income to meet his obligations under the district court's order. Husband identifies individual sums that he argues make it impossible for him to comply: \$5,775 per month in living expenses, \$1,862 per month in spousal maintenance, \$4,167 per month to make the quarterly equalizer payments, and \$3,654 per month in life-insurance premiums. Summing these obligations, husband's claimed monthly costs add up to \$15,468. But the evidence of the cost of insurance is not of record. The district court's order cannot be "contrary to evidence in the record" without record evidence of how much the insurance costs. *Chamberlain*, 615 N.W.2d at 409. The remaining, documented costs total only \$11,804 per month, more than \$2,000 less than what husband asserted were his reasonable expenses to maintain the marital standard of living. We cannot say that the district court abused its discretion in finding that husband could afford to provide spousal maintenance to wife.³

B. Remarriage

Husband argues that the district court abused its discretion by altering the normal presumption that maintenance ends on the recipient's remarriage. "Unless . . . expressly

³ Husband also challenges the district court's elimination of \$1,000 per month of charitable giving from his reasonable monthly expenses, but, given that he has \$2,000 to spare even before reaching his own claimed monthly expenses, we see no need to address this argument.

provided in the decree, the obligation to pay future maintenance is terminated upon . . . the remarriage of the party receiving maintenance.” Minn. Stat. § 518A.39, subd. 3 (2018). The district court’s order provides: “Any cohabitation or remarriage by [wife] may form a basis for a motion to modify spousal support under Minn. Stat. § 518.552, subd. 6.” Husband argues that this order expressly provides that future maintenance shall not be terminated by wife’s remarriage, but that is not actually clear. The district court’s order is descriptive, saying that remarriage “may” be a reason for a motion to modify—the order does not appear to “expressly provide” for non-termination if wife remarries.

At this time, we cannot address whether and on what conditions husband’s obligation to provide maintenance automatically terminates. “Appellate courts decide only actual controversies and avoid advisory opinions.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 97 (Minn. App. 2009) (quotation omitted). To establish that there is an actual, justiciable controversy, husband “must show a direct and imminent injury.” *Leiendecker v. Asian Women United of Minn.*, 731 N.W.2d 836, 841 (Minn. App. 2007) (quotation omitted), *review denied* (Minn. Aug. 7, 2007). Husband’s only objection to this part of the order is that he will “bear the burden of bringing a motion in district court” to terminate maintenance if wife remarries. But there are many possible outcomes where he would not need to do so: wife may never remarry, or may not remarry during husband’s lifetime, or may not remarry before husband brings a motion to modify maintenance for other reasons. Or other life circumstances may intervene. Simply put, any opinion on the meaning of this clause is not ripe for adjudication because husband can point to no imminent injury.

V. The district court did not abuse its discretion in declining to award wife attorney fees.

A. Conduct-based fees

Wife argues that the district court should have ordered husband to pay her attorney fees because his conduct “unreasonably contribute[d] to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2018).⁴

“A refusal to award attorney fees will not be reversed absent a clear abuse of discretion.” *Kitchar v. Kitchar*, 553 N.W.2d 97, 104 (Minn. App. 1996), *review denied* (Minn. Oct. 29, 1996). In *Kitchar*, we affirmed a refusal to award conduct-based attorney fees because both parties’ conduct contributed to the length and expense of a proceeding and because the party requesting fees failed to identify which costs were traceable to the other party’s purported bad conduct. *Id.* Generally, a party’s conduct outside the dissolution process is not a basis for an award of conduct-based attorney fees. *Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001).

Wife’s theory is that, by repeatedly supplying inadequate discovery responses, husband forced wife to spend more time and money on the proceeding than she otherwise would have needed to. Wife describes the purportedly offending conduct in great detail, but she cites no caselaw identifying how egregious conduct must be to make a district court’s refusal to award conduct-based attorney fees an abuse of discretion.

⁴ The parties here do not dispute that section 518.14, subd. 1, provides a substantive basis for an award of conduct-based fees, so we do not address that question. *Cf. Anderson v. Anderson*, No. A16-2006, order at 3 (Minn. Aug. 6, 2018) (questioning whether that section is a basis for conduct-based fees); *id.* at D1 (Gildea, C.J., dissenting) (arguing that the section does not provide such a basis).

Nevertheless, we observe that most of the additional complexity of this case was due to husband's pre-dissolution dissipation of assets and the generally unclear nature of his financial relationships with his brothers, and none of that conduct occurred during the dissolution. *See id.* While husband did fail to respond thoroughly to wife's discovery requests, many of those requests appear to have pushed the bounds of reasonableness—wife sought information stretching back to the beginning of the marriage, or even before, and sought information through husband from non-parties. Thus, even if husband's conduct did extend the length of the proceedings, his conduct during the dissolution is not the sole reason for its length. *See Kitchar*, 553 N.W.2d at 104. Finally, many of wife's examples of husband's purported bad conduct increased neither the complexity nor the length of the proceeding. She describes instances when, on cross-examination, husband contradicted himself or made unsupported claims. These portions of the transcript may show that husband was an unreliable witness, but it is not clear how proving himself unreliable at trial increased the length or complexity of the proceeding in a way that cost wife more in legal fees. *See id.*

In sum, the district court did not abuse its discretion in refusing to award conduct-based attorney fees to wife.

B. Need-based fees

A district court “shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding” if it finds that (1) they are necessary for a party to assert its rights in good faith; (2) the party from whom they are sought can afford to pay them; and (3) the party seeking them cannot afford to pay them.

Minn. Stat. § 518.14, subd. 1. Despite the mandatory language of the statute, caselaw has not uniformly held that the existence of all three findings requires an award of need-based fees. See *Geske*, 624 N.W.2d at 816 n.1 (noting the lack of uniformity). Because neither party here argues that an award of need-based fees is not discretionary with the district court, we will review the district court's refusal to award wife need-based attorney fees for an abuse of discretion. "An award of attorney fees rests almost entirely within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999). While it is true that husband's pre-obligation income is much greater than wife's, once his obligations to her are considered, the parties will have roughly equal resources available to them over the course of the next four years. Wife's argument—that she cannot afford to pay \$65,000 in attorney fees—is also belied by the fact that she is receiving a property equalizer of \$234,100, an amount that will clearly cover her attorney fees. Thus, the third statutory requirement is not met, and the district court did not clearly abuse its discretion in refusing to award need-based attorney fees.

Affirmed.