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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A18-0862

A18-1087

In re the Marriage of:
Dmitri M. Medvedovski, petitioner,
Appellant,

vs.

Nadezhda Ivanovna Medvedovski,
Respondent.

Filed January 22, 2019

Affirmed

Cleary, Chief Judge

Hennepin County District Court
File No. 27-FA-12-2889

Dmitri M. Medvedovski, St. Paul, Minnesota (pro se appellant)

John DeWalt, DeWalt, Chawla + Saksena, LLC, Minneapolis, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Cleary, Chief Judge; and
Worke, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Dmitri M. Medvedovski (father) challenges the district court's May 15, 2017 order, awarding respondent Nadezhda Ivanovna Medvedovski (mother) conduct-based attorney fees. Father also challenges the district court's April 13, 2018 order,

declining to consider father's responsive motion as untimely, denying father's motions to hold mother in contempt, and awarding mother conduct-based attorney fees. We affirm.

FACTS

Father and mother were married in October 2003, and the parties have two minor children. The parties separated in 2007, when mother moved out of the home due to domestic violence. *Medvedovski v. Medvedovski*, No. A09-2078, 2010 WL 2900321, at *1 (Minn. App. July 27, 2010), *review denied* (Minn. Sept. 29, 2010). Mother sought an order for protection (OFP), and father resolved the pending proceeding by agreeing to a no-contact order. *Id.* In December 2007, mother sought an additional OFP on behalf of the children, alleging that father engaged in sexual contact with one of the children. *Id.* Father denied any sexual contact, and an "ensuing investigation was inconclusive." *Id.*

In September 2009, the district court granted mother sole legal and sole physical custody, discontinued the children's OFP, invalidated the parties' prenuptial agreement, apportioned the homestead as marital property, determined that father had dissipated marital assets, set child support and spousal maintenance obligations, and awarded mother \$30,000 in both need- and conduct-based attorney fees. *Id.* at *1, *5. Father appealed, and this court affirmed, modifying the district court's inadvertent double counting of dissipated assets relating to the division of the parties' property. *Id.* at *3, *5.

In March 2014, October 2014, October 2015, and April 2016, father moved for sole legal and sole physical custody of the children. The district court denied father's motions. In February 2017, father again moved for sole legal and sole physical custody of the children on the bases of endangerment and interference with parenting time. *Medvedovski*

v. Medvedovski, 903 N.W.2d 646, 648 (Minn. App. 2017). In an order dated May 15, 2017, the district court denied father’s custody-modification motion and determined that father had unreasonably contributed to the length and expense of the proceeding and awarded mother \$3,000 in conduct-based attorney fees. Father appealed the denial of his custody-modification motion, and this court affirmed, determining that father’s custody-modification motion was procedurally barred because it was filed within two years after the disposition of a prior motion on the merits. *Id.* at 650.¹

Mother initiated contempt proceedings against father on October 4, 2017 for failure to pay the \$3,000 attorney-fees award. On January 9, 2018, mother also moved the district court for additional fees incurred in initiating contempt proceedings, and a hearing was set for January 25. On January 12, father filed a responsive motion, including six requests for relief. Mother filed a reply on January 19, asking the district court to deny father’s motion in its entirety and to award attorney fees incurred in responding to father’s countermotions. On January 20, father served, via U.S. mail, a second responsive motion, and it was filed with the district court on January 24. Mother’s counsel received father’s pleadings by U.S. mail on January 25—the day of the contempt hearing.

Ultimately, the district court denied mother’s motion to hold father in contempt of court, determining that contempt was not the appropriate remedy for unpaid attorney fees. The district court declined to consider father’s second responsive motion, finding that it

¹ In a June 16, 2017 order, this court dismissed the portion of the appeal from the May 15, 2017 order awarding attorney fees because the court administrator had not entered judgment on the attorney-fees award. Judgment was entered on June 8, 2018.

was untimely under Minn. R. Gen. Prac. 303. The district court also briefly noted the remainder of father's motions and denied his requests in their entirety. In regard to mother's request for attorney fees, the district court declined to award mother conduct-based attorney fees for initiating the contempt action, but awarded mother attorney fees in the amount of \$1,284 incurred in responding to father's "multiple, frivolous, requests for relief totaling 136 pages" Father appeals.

D E C I S I O N

On appeal, father challenges the district court's May 15, 2017 order, awarding mother \$3,000 in conduct-based attorney fees. In addition, father challenges the district court's April 13, 2018 order, declining to consider father's responsive motion because it was untimely, denying father's motions to hold mother in contempt, and awarding mother \$1,284 in conduct-based attorney fees.

I. The district court did not abuse its discretion in determining that father's responsive motion was untimely.

Father argues that the district court abused its discretion in declining to consider his second responsive motion. Father contends that he properly served his responsive papers on January 20, 2018, five calendar days before the hearing date. Under Minn. R. Gen. Prac. 303.03(a)(2), a responding party raising new issues other than those raised in the initial motion is required to serve a copy of the notice of motion and motion, relevant affidavits and exhibits, and any memorandum of law on all parties and file the documents with the court administrator at least 10 days before the hearing. The district court's decision to enforce or relax a procedural rule is reviewed under an abuse-of-discretion

standard. *Lee v. Lee*, 749 N.W.2d 51, 61-62 (Minn. App. 2008), *aff'd in part and rev'd in part on other grounds*, 775 N.W.2d 631 (Minn. 2009).

In his submission mailed on January 20, father asked the district court to deny mother's responsive motion in its entirety and to hold mother in civil contempt for violating a provision of the parties' dissolution judgment. Father argued that mother violated the requirement that each party keep the other informed of the name and address of his or her current employer, access to employment-related health insurance coverage, and relevant health insurance policy information. This issue was not raised in father's initial responsive motion. By arguing that mother violated a different portion of the dissolution judgment, father raised a new issue and was required to file the motion 10 days before the January 25 hearing. But father's motion was served by U.S. mail on January 20 and filed with district court administration on January 24. Father's responsive motion was untimely, and the district court did not abuse its discretion in declining to consider its contents.

II. The district court did not abuse its discretion in denying father's motions to hold mother in contempt of court.

Father argues that the district court erred in denying his motions to hold mother in contempt for failing (1) to provide him with tax release forms for tax years 2013 through 2018, and (2) to pay the cost increase associated with the children's monthly health and dental insurance premiums.

The district court has broad discretion to hold a party in civil contempt, and we review the district court's decision for an abuse of discretion. *Crockarell v. Crockarell*, 631 N.W.2d 829, 833 (Minn. App. 2001), *review denied* (Minn. Oct. 16, 2001). In order

to hold an individual in civil contempt of court, the district court must find that the individual “acted contumaciously, in bad faith, and out of disrespect for the judicial process.” *Newstrand v. Arend*, 869 N.W.2d 681, 692 (Minn. App. 2015) (quotation omitted), *review denied* (Minn. Dec. 15, 2015). The purpose of holding a party in civil contempt of court is to secure compliance with a court order, not to punish a party for failing to perform in the past. *Id.*

The district court found that father provided mother with a ten-year tax release form in 2009, but she was uncomfortable signing a release for ten years. The district court also found that father did not believe that the parties’ dissolution judgment required him to provide the necessary documentation to mother every year. The district court further found that “[n]o additional testimony was provided on [father]’s additional motions.”

First, father asserts that mother failed to provide him with the appropriate release forms to allow him to claim the minor children as dependents. The tax documents presented to the district court by both parties address the issue of a shared dependent. These documents do not conclusively indicate that father asked mother for the release forms or that mother failed to provide them. Additionally, at the contempt hearing, father informed the district court that he did not have any evidence that mother failed to provide him with the necessary release forms beyond his oral inquiries. The district court did not abuse its discretion in denying father’s motion to hold mother in contempt for failing to provide father with tax release forms.

Second, father argues that mother was required to directly pay father her share of the children’s health and dental insurance premiums. At the district court, father submitted

a previous district court order explicitly stating that mother's share of the health and dental insurance premiums is offset in father's child support calculation. Father's argument is unpersuasive given that mother's percentage is already reflected in father's lowered child support payment. The district court did not abuse its discretion in denying father's motion to hold mother in contempt for failing to pay him her share of the insurance premiums.

III. The district court did not abuse its discretion in awarding conduct-based attorney fees.

A district court may, "in its discretion, [award] additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2018). Conduct-based fee awards "are discretionary with the district court." *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). Conduct-based fees may be "based on the impact a party's behavior has on the costs of the litigation regardless of the relative financial resources of the parties." *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). We review a district court's award of attorney fees for abuse of discretion. *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010).

A. May 15, 2017 Award

Father argues that because his custody-modification motion was meritorious, the award of attorney fees was unwarranted. In the May 15, 2017 order awarding mother \$3,000 in conduct-based attorney fees, the district court carefully considered father's conduct. In determining that an award of attorney fees was justified, the district court considered that father had unsuccessfully brought the same motion five consecutive times.

The district court further found that father’s “basic allegation is the same: that the children’s emotional health is endangered as there has been no progress in the reunification therapy which is entirely due to the conduct of [mother].” The district court noted that “[p]ervasive throughout this file are concerns and statements raised regarding [father]’s lack of credibility and good faith.” The district court also detailed instances throughout the case where father’s actions were non-cooperative, misleading, and misrepresentative, leading the district court to question father’s good faith and credibility in the present motion. Because father’s motion caused mother to defend herself “against the same spurious claims,” the district court determined that father’s conduct unreasonably contributed to the length and expense of the proceeding and warranted an award of conduct-based attorney fees to mother.

In the appeal of the district court’s denial of father’s custody-modification motion, this court rejected father’s custody-modification arguments as procedurally barred. *Medvedovski*, 903 N.W.2d at 650. This court determined that father’s motion was procedurally-barred because it was filed within two years after disposition of a prior motion on the merits. *Id.* Based on our prior opinion, the district court did not abuse its discretion in determining that father unreasonably contributed to the length and expense of the proceeding by bringing a procedurally-barred motion.

B. April 13, 2018 Award

Father argues that the district court abused its discretion in its April 13, 2018 award of conduct-based attorney fees because (1) mother’s motion failed to satisfy procedural requirements, (2) mother and the district court also contributed to the length and expense

of the proceeding, (3) father's motions seeking to hold mother in contempt were not frivolous, and (4) the district court failed to specify actual instances of conduct justifying an award of conduct-based attorney fees and the calculation used in arriving at the fee award.

The district court found that father unreasonably contributed to the length and expense of the proceeding by "rais[ing] multiple, frivolous, requests for relief totaling 136 pages to which [mother] was subsequently required to respond." The district court awarded mother \$1,284 in conduct-based attorney fees incurred in responding to father's counter motions, but denied mother's request for conduct-based fees in bringing her initial motion to hold father in contempt for unpaid attorney fees.

Father argues that mother's motion for attorney fees was untimely and improperly supported by an un-notarized affidavit. But conduct-based attorney fees may be awarded at any point in the proceeding. Minn. Stat. § 518.14, subd. 1. Additionally, Minn. Stat. § 358.116 (2018)² provides that, unless specifically required by a court rule, an affidavit is not required to be notarized. Under Minn. R. Gen. Prac. 303.02, "[a]ll motions must be supported by affidavits that contain facts relevant to the issues before the court." There is no requirement that supporting affidavits be notarized. Mother's motion for conduct-based attorney fees satisfied procedural requirements.

² Minn. Stat. § 358.116 was amended in 2018. 2018 Minn. Laws ch. 176, art. 2, § 3, at 19-20. Although the 2017 version of the statute was in effect at the time mother filed her affidavit, we cite to the most recent version because it was not amended in relevant part.

Father further asserts that an award of fees is inappropriate because mother and the district court contributed to the length and expense of the proceeding. Father argues that mother contributed to the length and expense of the proceeding because she initiated contempt proceedings. Although the district court ultimately denied mother's motion to hold father in contempt, mother presented a colorable legal argument in an attempt to collect unpaid attorney fees. *See Kitchar v. Kitchar*, 553 N.W.2d 97, 104 (Minn. App. 1996) (declining to award attorney fees on appeal where "both parties presented colorable legal arguments on difficult issues"), *review denied* (Minn. Oct. 29, 1996). Moreover, father cites no legal authority for his assertion that a district court is capable of contributing to the length and expense of the proceeding. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) (appellate courts "will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority").

As discussed above, father's arguments regarding his motions to hold mother in contempt are unpersuasive. This dispute arose when mother initiated contempt proceedings against father to collect the award of conduct-based attorney fees from the district court's May 15, 2017 order. In his responsive motion, father moved for the following: (1) denying mother's motion in its entirety; (2) sanctioning mother's attorney in the amount of \$10,000 for unnecessarily increasing the cost of litigation over the past ten years; (3) holding mother in constructive civil contempt and ordering her incarceration for violating a term of the parties' dissolution judgment relating to the provision of tax release forms for claiming the children as dependents; (4) awarding father \$12,500 for reimbursement of tax penalties, accountant fees, and legal fees; (5) holding mother in

constructive civil contempt and ordering her incarceration for violating a term of the parties' dissolution judgment relating to mother's share of the children's medical and dental expenses; and (6) finding mother's actions to be in bad faith and of a harassing nature and awarding father \$7,500. Rather than simply addressing the issues before the district court in the contempt motion, father's countermotions were retaliatory and sought relief for grievances dating back ten years. The district court did not abuse its discretion in awarding mother conduct-based attorney fees sustained in replying to father's reactive countermotions.

Affirmed.