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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0040**

In re the Marriage of: James Richard Huntsman, petitioner,
Appellant,

vs.

Zenith Annette Huntsman,
Respondent.

**Filed July 22, 2019
Affirmed
Connolly, Judge**

Washington County District Court
File No. 82-F7-98-002231

James R. Huntsman, Mounds View, Minnesota (pro se appellant)

Bradley C. Eggen, Law Offices of Brad C. Eggen, Minneapolis, Minnesota (for
respondent)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Smith, John, Judge.*

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

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant-husband, a judgment debtor, argues that the district court abused its discretion by denying his motion for amended findings in regard to appellant's motion for contempt, fraud, and triple damages and respondent's motion to vacate the full satisfaction of judgment filed by appellant and by granting respondent's motion for sanctions under Minn. R. Gen. Prac. 9. He also argues that the district court erred in granting respondent's motions for an order compelling appellant to respond to discovery requests and abused its discretion in awarding her conduct-based attorney fees. Because we see no abuse of discretion in the findings or in the award of attorney fees and no error in the order compelling discovery, we affirm.

FACTS

When the marriage of appellant James Huntsman and respondent Zenith Annette Huntsman was dissolved in 2000, appellant was required to pay respondent monthly permanent spousal maintenance of \$1,562.27. In 2010, a Qualified Domestic Relations Order (QDRO) provided that payments of ongoing maintenance and arrearages be made from appellant's 3M retirement account and that a supersedeas security fund of \$52,000 be set up at US Bank.

In 2012, the district court, having found that appellant "ha[d] engaged in frivolous litigation through numerous appeals that were found to be without merit," ordered him, under Minn. R. Gen. Prac. 9, to "confirm by sworn statement that he has paid all his arrears of spousal maintenance and medical insurance premiums to the date" of any future motion

he brings in this case. That order was affirmed by this court. *Huntsman v. Huntsman*, No. A12-2147 (Minn. App. Oct. 28, 2013), *review denied* (Minn. Dec. 17, 2013).

In April 2015, the QDRO was amended and the district court issued an order finding that: (1) appellant filed motions on May 12, 2014, July 3, 2014, July 11, 2014, and six motions on Sept. 4, 2014; (2) appellant was not truthful when he “confirmed to the Court that he had paid all arrears”; and (3) appellant owed respondent \$17,083.80 in arrearages and \$17,158.10 in need and conduct-based attorney fees. The order required appellant to pay respondent \$17,158.10 in need-based and conduct-based attorney fees. Again, this court affirmed. *Huntsman v. Huntsman*, No. A15-1781, (Minn. App. July 28, 2016) (order op.) (noting that “[t]his is the fourteenth of fifteen actual or attempted appeals taken by [appellant] in the proceedings involving the dissolution of his marriage” and that appellant sought a stay of his 15th appeal so that it could be consolidated with his 16th appeal in the interest of “judicial economy”).

Between April 2016 and May 2017, judgments totaling \$60,696.46 were entered against appellant by the district court, this court, and the supreme court. On December 22, 2017, the district court granted respondent’s motion to compel appellant to respond to interrogatories and a request for production. On May 16, 2018, the district court issued an order (1) granting respondent’s motions for a Rule 9 order, an amended QDRO, and attorney fees, (2) denying respondent’s motion to consolidate the judgments against appellant, (3) denying appellant’s motions for damages for contempt and fraud, and (4) awarding respondent \$22,400 in additional conduct-based attorney fees. On

November 5, 2018, the district court issued an order denying appellant's motions for amended findings and awarded respondent additional conduct-based attorney fees.

Appellant challenges the orders of December 22, 2016, May 16, 2018, and November 5, 2018.

D E C I S I O N

1. Motion for Amended Findings

A district court abuses its discretion regarding maintenance if its findings of fact are unsupported by the record or if it improperly applies the law. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 & n.3 (Minn. 1997) (citation omitted).

A. Contempt, Fraud, and Triple Damages

The district court denied appellant's motion for damages for contempt and fraud and for triple damages because appellant's allegations were based on the premises that (1) he, not respondent, had the right to decide to which judgments his \$600 payments would be applied and (2) respondent's application of the payments to judgments other than the September 3, 2015 QDRO was contempt and fraud and violated Minn. Stat. §§ 481.06(4), 481.07, and 481.071 (2018). This court affirmed the September 3, 2015 QDRO. *Huntsman*, No. A15-1781.

In February 2018, respondent moved to amend the QDRO to provide continual monthly payments until she filed a satisfaction of the judgments of September 3, 2015, June 6, 2016, November 21, 2016, and December 29, 2016. The district court granted her motion, "conclud[ing] that the proposed Amended QDRO as a means to collect maintenance arrearages and attorney fee judgments is necessary to implement the

provisions in the Decree.” Neither the original QDRO nor its amended version entitles appellant to recover damages for contempt or fraud or triple damages. The district court did not abuse its discretion in denying appellant’s motion.

B. Vacating the Satisfaction of Judgment

In a May 16, 2018 order, a different district court judge found:

25. On May 20, 2015, [appellant] moved for amended findings of [the previous judge’s] April 15, 2015 Order. On September 2, 2015, [that judge] issued an “order affirming [appellant’s] maintenance arrearage payments.” [That judge] concluded that [appellant] owed \$4,029.53 in unpaid maintenance. . . .

. . . .

32. On November 21, 2017, [appellant] filed a Full Satisfaction of Judgment for the \$4,029.53 in maintenance arrearages from the September 3, 2015 Judgment.

The district court concluded: “7. The Court Administrator shall vacate the ‘Full Satisfaction of \$4,029.53 judgment’ filed by [appellant] on November 21, 2017.”

Appellant decided that the \$600 monthly payments should be applied to the judgment of maintenance arrearages. When he concluded that there had been enough payments to satisfy the judgment, he filed a full Satisfaction of Judgment and directed 3M to stop making the \$600 payments. However, respondent had applied the payments to attorney fees, not to the judgments, and the maintenance arrearage judgment was not satisfied. Appellant also made a payment of \$2,900 that he said was partial satisfaction of that judgment.

Appellant argues that he, not respondent, had the right to decide where the payments would be applied and that respondent’s application of them to attorney fees constituted

fraud upon the court. The district court rejected this argument in its November 5, 2018 order at Finding 17.

17. Appellant extensively briefed this issue at the motion hearing and it formed the basis for his motion for fraud upon the court. The Court rejected that argument in its Conclusions of Law (specifically Conclusion of Law 24). Thus, to the extent that [appellant] reargues his prior briefs, this is more properly characterized as a motion for reconsideration which does not form the basis of a motion for amended findings. Appellant also argues that respondent improperly applied a \$2,900 payment received from the sale of a collector car in 2016 to attorney fee judgments and not to maintenance arrearages. Respondent's attorney provided an affidavit indicating that at the time the car funds were received, the application of these funds [was] not restricted to any certain judgment. Even if [it was], appellant failed to raise this issue in a timely manner and this Court will not address it more than two years after the payment was received.

Appellant provides no support for his view that he had the right to decide whether his payment would be applied to attorney fees or maintenance arrearages. Respondent notes that appellant "had been informed by the court in the past that he did not get to pick and choose to which judgments the involuntary payments would be applied" and claimed that the maintenance-arrearages judgment was paid "to avoid the collection of arrears on attorney fee judgments which resulted from his failure to pay maintenance." Appellant does not refute respondent's argument that, when he filed his "full satisfaction" of the \$4,029.53 judgment, that judgment had not been satisfied. Therefore, the district court did not err in ordering that the full satisfaction filed by appellant be vacated.

2. Motion for Sanctions under Minn. R. Gen. Prac. 9

This court applies an abuse-of-discretion standard to its review of a district court's decision to impose sanctions. *See Cole v. Star Tribune*, 581 N.W.2d 364, 370 (Minn. App. 1998); *Huntsman*, No. A12-2147 (Minn. App. Oct. 28, 2013) (stating that an abuse of discretion standard is applied to decisions on sanctions under Minn. Stat. § 549.21 or Minn. R. Civ. P. 11).

“The [district] court may . . . enter an order . . . (b) imposing preconditions on a frivolous litigant's service or filing of any new claims, motions, or requests . . .” Minn. R. Gen. Prac. 9.01. Before imposing such a sanction, the court is to consider seven factors. Minn. R. Gen. Prac. 9.02(b).

The first two factors are (1) the frequency and number of claims pursued with an adverse result and (2) the probability of prevailing on the current claim, motion, or request. Minn. R. Gen. Prac. 9.02(b)(1)(2). The district court concluded that: (1) the case file includes over 1,500 entries; (2) appellant generated all the appellate filings; (3) all respondent's motions were brought to collect outstanding maintenance and attorney fees, and all appellant's motions were brought to contest maintenance and attorney fee awards; (4) appellant has had “very little success” with his motions and appeals; and (5) appellant filed over ten pages of pleadings for an exemption claim of \$402.28. Thus, appellant had pursued a large number of claims with an adverse result and had little probability of prevailing on his current motions, and these facts supported respondent's Rule 9 motion.

The third factor is whether the claim, motion, or request was brought for the purpose of harassment, delay, or vexatiousness, or otherwise in bad faith. Minn. R. Gen. Prac.

9.02(b)(3). The district court relied on this court's holding in its 2013 *Huntsman* decision, rejecting appellant's procedural objections and noting that:

The district court did not base its [Rule 9] limitations solely on appellant's current motions. Rather, it considered appellant's behavior throughout the more than decade-long history of the case. The district court found that "throughout the history of this case, [appellant] has engaged in frivolous litigation through numerous appeals that were found to be without merit, and that [r]espondent as a result of [appellant's] litigious behavior, has been left in an extremely compromised financial position."

2013 WL 5777908 at *8. It is now almost two decades since appellant began his protracted litigation in opposition to respondent's awards of maintenance and attorney fees, and his tactics do not seem to have changed from those rejected by this court in 2013.

The fourth factor is the injury incurred by prevailing litigants and to the efficient administration of justice. Minn. R. Gen. Prac. 9.02(b)(4). The district court noted the financial injury incurred by respondent as she attempted to oppose appellant's "confusing and inconsistent" claims in his motion to modify maintenance, the frustration of the district court's efforts to determine the amounts owed to respondent by appellant's failure to provide the appropriate financial documents, and "numerous other examples of the financial strains suffered by [respondent] caused by [appellant's] excessive litigation as well as the burden his excessive litigation places on both the district and appellate courts to efficiently administer justice." The record supports the district court's finding.

As to the fifth factor, the effectiveness of prior sanctions in deterring the pursuit of frivolous claims, Minn. R. Gen. Prac. 9.02(b)(5), the district court noted that, as stated in a 2015 district court order, appellant was not truthful to the court concerning his payment of

arrearages when he filed nine motions between May and September 2014, and respondent has been awarded over \$50,000 in attorney fees by district and appellate courts since the 2012 order that imposed Rule 9 sanctions. Thus, the prior sanctions have not deterred appellant from his pursuit of frivolous claims.

As to the sixth factor, the likelihood that sanctions will ensure adequate safeguards and enable the compensation of the adverse party, Minn. R. Gen. Prac. 9.02(b)(6), the district court observed that requiring appellant to pay outstanding attorney fees and costs before bringing any other motions will help to compensate respondent.

As to the seventh factor, whether a less severe sanction would adequately protect litigants, the public, or the courts, Minn. R. Gen. Prac. 9.02(b)(7), the district court noted that appellant had not followed the 2012 sanction requiring him to verify payment of maintenance arrearages and health insurance premiums prior to filing new motions; he had also caused respondent to incur over \$50,000 in attorney fees since that sanction was imposed, thus justifying the more severe sanction in the 2016 order. The Rule 9 sanction imposed in that order was not an abuse of discretion.

3. Respondent's Discovery Requests

Respondent moved “for an order compelling [appellant] to respond to the interrogatories and request for production served November 13, 2016.” The district court granted her motion in its order of December 22, 2017, concluding that “Respondent’s November 13, 2016 interrogatory and request for production is in compliance with Minnesota law.” Appellant argues that this conclusion is erroneous. This court reviews

the district court's application of the law de novo. *In re Estate of Barg*, 752 N.W.2d 52, 63 (Minn. 2008).

Respondent requested post-judgment discovery of appellant's complete income stream, bank accounts, and assets. Appellant argues that, because respondent's discovery request began with the phrase, "Pursuant to the Minnesota Rules of Civil Procedure" and did not specify any particular rule or rules, she failed to comply with Minn. R. Civ. P. 69. That rule states that a judgment creditor seeking the execution of a judgment "may obtain discovery from any person." Respondent, in a reply to appellant's objection, did cite the rule but omitted the phrase that the procedure "shall be in accordance with the Minnesota Statutes, chapter 550."

Appellant concedes that respondent "finally complied with" the statute by having an order for disclosure served on him, but argues that her omission of the phrase "negated any need for [appellant] to comply formally with [respondent's] discovery requests" and that he "did informally essentially comply with the information [sought] in respondent's discovery request" in Exhibits 3-6 of his affidavit opposing her motions. But the affidavit and exhibits, a series of letters between appellant and respondent's attorney, do not provide any clear statement of appellant's full income stream, bank accounts, and other assets.

The district court did not err in concluding that respondent had complied with Minnesota law in her interrogatory and request for production of documents or in ordering appellant to comply with them.

4. Conduct-based Attorney Fees

Conduct-based attorney fees “may be awarded against a party who unreasonably contributes to the length or expense of the proceedings and are discretionary with the district court.” *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007) (quoting Minn. Stat. § 518.14, subd. 1 (2006)).

The district court found in its May 16, 2018, order that, between April 2016 and May 2017, the district court entered attorney-fee judgments against appellant of \$3,350; this court entered \$52,786.46; and the supreme court entered \$4,560, a total of \$60,696.46. The district court also found that “[Respondent] seeks \$30,405.00 in attorney fees and \$267.50 in costs. Of those fees, \$3,255 were related to the garnishment proceeding which this Court already denied and \$4,740.00 relate to the Removal motion and hearings.” The district court then concluded that “The Findings of Fact as set forth in this Order demonstrate that [appellant’s] conduct has unreasonably contributed to the length and expense of the proceeding” and entered judgment for respondent against appellant in the amount of \$22,400.¹ Thus, the total of the attorney-fee judgments against appellant in May 2018 was \$83,276.46 (\$60,876.46 + \$22,400). Both this court and the district court have referred repeatedly to appellant’s excessive litigation. *See, e.g., Huntsman*, No. A16-0971 (order op.) (affirming conduct-based attorney fees and quoting the district court’s reference to appellant’s “‘excessive litigation conduct’ in which he repeatedly has sought to avoid paying spousal maintenance by raising specious issues”) (quotation omitted)).

¹ \$3,255 + \$4,740 = \$7,995; \$30,405 - \$7,995 = \$22,410.

In its November 5, 2018 order, the district court found that “[appellant’s] motions are too lengthy and address numerous issues that have already been decided by prior decisions of the district court and appellate courts. Thus, [appellant’s] actions unreasonably contributed to the expense of the proceedings.” The district court awarded respondent a further \$2,520 in conduct-based attorney fees, which was \$1,350 less than she requested.

Particularly in light of the district court’s careful review of respondent’s attorney-fee requests and its awards of only part of her requested fees, there is no indication that the district court abused its discretion in awarding conduct-based attorney fees.

Affirmed.