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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1202**

In re the Marriage of: John Gordon Lewis, petitioner,
Respondent,

vs.

Elizabeth Ann Lewis,
Appellant.

**Filed October 26, 2020
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-FA-12-1346

Anne M. Honsa, Deborah M. Gallenberg, Honsa Mara Landry, Minneapolis, Minnesota
(for respondent)

Elizabeth A. Lewis, Wayzata, Minnesota (*pro se* appellant)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

This appeal arises from a post-dissolution motion concerning parenting time and other issues. The district court denied the motion and awarded conduct-based attorney fees to the non-moving party. We conclude that the district court did not err by not considering the moving party's ability to pay the fee award. Therefore, we affirm.

FACTS

John Gordon Lewis and Elizabeth Ann Lewis were married in 1992, and their marriage was dissolved in 2013. The parties have five children. All of the parties' children were minors when the marriage was dissolved. Four of them now are adults.

After John petitioned for dissolution, the parties negotiated an agreement that resolved all contested issues, and the agreement was incorporated into the dissolution judgment and decree. The decree provides for joint legal custody of the parties' minor children and a detailed parenting-time schedule. The decree also provides for the appointment of a parenting consultant, who is identified by name, "to assist [the parties] in resolving disputes regarding their minor children." The decree defines the scope of the parenting consultant's authority by including certain issues, such as parenting time, the children's activities, and communications, and by excluding certain other issues, such as child custody, spousal support, and child support. The decree requires the parties to attempt to resolve disputed issues themselves before seeking the assistance of the parenting consultant. The decree further provides that the parties "must abide by all decisions that are made by the Parenting Consultant, unless modified by subsequent court order." After the parenting consultant has considered a dispute and made a decision, either party may bring a motion in the district court for review of the parenting consultant's decision.

In August 2018, Elizabeth sent a seven-page letter to the parenting consultant to raise various issues concerning John and the children. In November 2018, Elizabeth served and filed a motion in the district court seeking an order that John is in contempt of court on the ground that he has not complied with the parenting plan. Elizabeth also moved for

other relief, including a modification of custody, an award of child support, and an accounting of the children's custodial financial accounts. In December 2018 and January 2019, John's attorney sent Elizabeth two letters stating that some of the issues in her motion must be presented to the parenting consultant instead of the district court. Elizabeth responded with a letter stating, in essence, that John had not cooperated with the process of utilizing the parenting consultant and that she would proceed with her motion.

In February 2019, John served and filed a 23-page affidavit that responded in detail to each of the issues raised by Elizabeth's motion. He also moved for conduct-based attorney fees. He sought \$4,949 for the fees he incurred in corresponding with Elizabeth about the role of the parenting consultant and in preparing his written response to Elizabeth's motion.

In May 2019, the district court filed an order in which it denied Elizabeth's motion in all respects, granted John's motion for attorney fees, and ordered Elizabeth to pay John \$4,000 in conduct-based attorney fees. Elizabeth appeals.

D E C I S I O N

Elizabeth, who is self-represented, argues that the district court erred by granting John's motion for conduct-based attorney fees.

By statute, a party to a dissolution action or post-dissolution proceeding may obtain an award of attorney fees that are "necessary for the good faith assertion of the party's rights in the proceeding" if the party seeking fees "does not have the means to pay them" but the other party does have such means. Minn. Stat. § 518.14, subd. 1(1)-(3) (2018). In addition, the same statute provides, "Nothing in this section or section 518A.735 precludes

the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding.” *Id.* This court has interpreted the statute to provide a legal basis for an award of “conduct-based” attorney fees. *See, e.g., Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295-96 (Minn. App. 2007); *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001).¹ Whether to award conduct-based attorney fees generally depends on “the impact a party’s behavior has had on the costs of the litigation.” *Dabrowski v. Dabrowski*, 477 N.W.2d 761, 766 (Minn. App. 1991). This court applies an abuse-of-discretion standard of review to such an award. *Haefele v. Haefele*, 621 N.W.2d 758, 767 (Minn. App. 2001), *review denied* (Minn. Feb. 21, 2001).

In this case, the district court noted that John sought attorney fees for his “efforts, through counsel, to have the issues raised in mother’s motion and affidavit addressed by the [parenting consultant].” The district court found that Elizabeth “refused to do so.” The district court also found that John “provided a lengthy and detailed affidavit . . . in support of his request” for attorney fees.

Elizabeth contends that the award must be reversed on the ground that she lacks the means to pay it. She states that she is receiving government assistance with respect to her health-care expenses. In response, John contends that there is no legal or factual support

¹Neither party has questioned whether section 518.14 provides a substantive basis for an award of conduct-based attorney fees. For purposes of this appeal, we assume without deciding that the statute does so. *Cf. Anderson v. Anderson*, No. A16-2006, at 3 (Minn. Aug. 6, 2018) (order); *id.* at D1 (Gildea, C.J., dissenting); *see also Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019).

for Elizabeth's statement. We need not consider whether there is factual support for Elizabeth's argument. Any such evidence would be irrelevant because this court has expressly stated that a district court may award conduct-based attorney fees "regardless of the payor's ability to contribute to a fee award." *See Geske*, 624 N.W.2d at 818; *see also Dabrowski*, 477 N.W.2d at 766. In light of this court's caselaw, Elizabeth's financial condition is not a reason to reverse the district court's award of conduct-based attorney fees. Elizabeth does not challenge the award on any other ground.

Thus, the district court did not err by awarding John \$4,000 in conduct-based attorney fees.

Affirmed.