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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0211**

In re the Marriage of: Kevin James Stanton, petitioner,
Appellant,

vs.

Megan Caroline Curran,
Respondent.

**Filed February 1, 2021
Affirmed
Hooten, Judge**

Hennepin County District Court
File No. 27-FA-17-1840

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Considered and decided by Smith, Tracy M., Presiding Judge; Hooten, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from a marital dissolution judgment and decree, appellant father argues that the district court erred by (1) denying his request to change the child's last name, (2) requiring his parenting time to be supervised, (3) granting the parenting consultant limited authority to address the parties' parenting disputes, (4) awarding his nonmarital property to respondent mother, (5) awarding mother need-based and conduct-

based attorney fees and costs, (6) requiring that he secure his child support obligation, (7) awarding mother retroactive child support, and (8) requiring that he pay the supervision fees associated with his parenting time. Father also argues that the dissolution process was unfair. We affirm.

FACTS

Appellant Kevin James Stanton (Stanton) and respondent Megan Caroline Curran (Curran) are the parents of one minor child, who was born on November 24, 2014. The parties married in 2015 and lived together for approximately six months until they separated. In March 2016, Stanton filed a petition for dissolution. After the parties stipulated to custody and parenting time, they reconciled their differences and lived together for another four months. Following a period of inactivity, their divorce case was administratively dismissed. In March 2017, Stanton filed a new petition for dissolution.

In the same month, Curran obtained an ex parte OFP for herself and the minor child based on her assertions that Stanton had thrown dishes and food during a heated argument between the parties while the minor child was present. Shortly after, the district court appointed a guardian ad litem for the minor child. Following a preliminary report from the guardian ad litem regarding his communications with child protective services, the district court held a hearing and issued an OFP on behalf of Curran, excluding the minor child as a “protected person.” However, because the guardian ad litem reported that child protective services had concerns about Stanton’s access to the minor child, the district court reserved Stanton’s parenting time. The district court also granted Curran temporary sole legal and temporary sole physical custody of the minor child. Although the state

subsequently brought criminal charges against Stanton for violating the OFP, that matter settled when Stanton pleaded guilty to disorderly conduct. The OFP was eventually extended through August 12, 2024.

Approximately a month after the issuance of the original OFP, the district court issued an order, which was based on the parties' stipulation, awarding Stanton supervised parenting time with the minor child. While Stanton exercised his supervised parenting time for nearly two years, he chose to stop exercising his parenting time during the three months prior to the dissolution. Stanton also refused to pay his child support obligation and proportionate share of child-related expenses for two months prior to the dissolution.

At trial, two jointly commissioned neutral experts, a parenting time evaluator, who had conducted a custody and parenting time evaluation, and a psychological evaluator, who had completed psychological evaluations of the parties, appeared and presented their reports. Two lay witnesses from Stanton's family also offered testimony: Stanton's sister and his step-daughter from a prior marriage. Both witnesses testified as to Stanton's violent past. Stanton's sister described Stanton's acts of violence in his childhood against herself and their mother. Stanton's stepdaughter spoke of Stanton's acts of violence against herself and her mother, as well as Stanton's failure to supervise the parties' minor child.

Throughout the dissolution proceeding, Stanton, who had been terminated from a family-owned business by his father in 2015, remained unemployed. However, Stanton was due to receive an inheritance between \$4 million and \$4.5 million, with an initial distribution of \$1.4 million to \$1.5 million. Stanton conceded that he was voluntarily retired and agreed that income for temporary support purposes could be imputed to him at

a rate commensurate with his historical earnings. He also testified that he currently runs a “sober lodge” business, an unlicensed alcohol detoxification program for up to eight people, out of his home. Stanton charges program participants \$600 in rent per month.

Curran was employed as a nurse by the Emily program and as a personal care attendant for her developmentally-disabled brother. According to her W-2s, Curran’s 2018 gross earnings were \$39,879.96 for her work with the Emily program and \$1,509.37 for her work as a personal attendant. Curran also received an additional \$500 per month in child support from the father of a child from another relationship. Finally, Curran received \$1,450 as monthly gross income from renting out her premarital townhome.

After trial, the district court issued a judgment and decree, denying Stanton’s request to change the minor child’s surname; determining child custody, parenting time, and child support; dividing the parties’ property; and awarding need-based and conduct-based attorney fees to Curran. Stanton appeals.

DECISION

I. The district court did not abuse its discretion by denying Stanton’s petition to change the minor child’s last name.

Stanton first challenges the district court’s denial of his petition to change the minor child’s last name from Curran to Stanton. This court reviews a district court’s denial of a request to change a minor child’s name for an abuse of discretion. *See In re Welfare of C.M.G.*, 516 N.W.2d 555, 561 (Minn. App. 1994). “A district court abuses its discretion when evidence in the record does not support the factual findings, the court misapplied the

law, or the court settles a dispute in a way that is against logic and the facts on record.” *Foster v. Foster*, 802 N.W.2d 755, 757 (Minn. App. 2011) (quotation omitted).

Minn. Stat. §§ 259.10, .11 (2018) govern the procedures for changing a name. If a name change involves a minor, the application must be made by the child’s guardian, and both of the child’s parents must be provided notice. Minn. Stat. § 259.10, subd. 1 (2018). A district court may deny a request for a name change if it finds that the change is not in the child’s best interests. Minn. Stat. § 259.11(a) (2018). A best-interests-of-the-child analysis concerning a name change includes consideration of the following factors:

(1) how long the child has had the current name, (2) any potential harassment or embarrassment the change might cause, (3) the child’s preference, (4) the effect of the change on the child’s relationship with each parent, and (5) the degree of community respect associated with the present and proposed names.

C.M.G., 516 N.W.2d at 561. “If neither parent of the child opposes the request to change the child’s name, the district court must grant the request after determining that the name change is in the child’s best interests.” *Foster*, 802 N.W.2d at 757. However, if a parent objects to the name change, a district court should grant the name change “only where the evidence is clear and compelling that the substantial welfare of the child necessitates such change.” *In re Saxton*, 309 N.W.2d 298, 300–01 (Minn. 1981). A district court may still grant a request for a name change over a parent’s objection, but must do so “with great caution,” *Foster*, 802 N.W.2d. at 757 (quotation omitted), and must clarify the clear and compelling reasons that support such a decision. *C.M.G.*, 516 N.W.2d at 561.

Stanton argues that the district court abused its discretion because it did not properly consider the appropriate factors when denying his request to change the minor child's surname. The district court's order indicates that it denied Stanton's request for the following reasons, which are supported by the record: (1) the child has used his mother's surname since the child's birth, as confirmed by the child's birth certificate and baptismal certificate; (2) the parties did not dispute that the child has never used a different surname than Curran; (3) both parties were present at the child's baptism, where the child's full name was affirmed; and (4) the child's medical and school records use the surname Curran. The district court also noted that Stanton offered no evidence that the substantial welfare of the minor child necessitated a name change.

Because Curran objected to the name change, Stanton had the burden of proving by clear and compelling evidence that the substantial welfare of the child necessitated a name change. *Saxton*, 309 N.W.2d at 300–01. Stanton offered no evidence at trial detailing why changing the child's surname was in the child's best interest, so the district court could neither conduct a complete analysis of the relevant factors nor find any clear and compelling reasons to support a name change. Given the absence of such evidence in the record, the district court's determination that there were no clear and compelling reasons for the name change was not clearly erroneous. The district court did not abuse its discretion by denying Stanton's request to change the minor child's surname.

II. The district court did not abuse its discretion by ordering that, without modification until the minor child attains the age of eight, Stanton’s parenting time will be supervised.

Stanton argues that the district court clearly erred by granting him parenting time only in a high supervision setting without modification until the minor child reaches age eight. “The district court has broad discretion in determining parenting-time issues and will not be reversed absent an abuse of discretion.” *Shearer v. Shearer*, 891 N.W.2d 72, 75 (Minn. App. 2017) (quotations omitted). In deciding parenting time issues, a district court abuses its discretion if it makes findings of fact that are not supported by the evidence or if it misapplies the law. *Hansen v. Todnem*, 908 N.W.2d 592, 596 (Minn. 2018). We view “the record in the light most favorable to the [district] court’s findings.” *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). A district court’s findings of fact will be upheld unless clearly erroneous. *Griffin v. Van Griffin*, 267 N.W.2d 733, 735 (Minn. 1978). This court defers to the district court’s credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Under Minn. Stat. § 518.175, subd. 1(a) (2018), the district court shall “grant such parenting time on behalf of the child and a parent as will enable the child and the parent to maintain a child to parent relationship that will be in the best interests of the child.” “[T]here is a rebuttable presumption that a parent is entitled to receive a minimum of 25 percent of the parenting time for the child.” *Id.*, subd. 1(g) (2018). If “parenting time with a parent is likely to endanger the child’s physical or emotional health or impair the child’s emotional development, the court shall restrict parenting time with that parent as to time, place, duration, or supervision and may deny parenting time entirely, as the circumstances

warrant.” *Id.*, subd. 1(b) (2018). “It is well established that the ultimate question in all disputes over [parenting time] is what is in the best interest of the child.” *Clark v. Clark*, 346 N.W.2d 383, 385 (Minn. App. 1984), *review denied* (Minn. June 12, 1984).

The district court awarded sole physical custody of the minor child to Curran and ordered Stanton’s parenting time to be in a high-supervision setting until the child reaches age eight. The district court found that based upon the record, including the reports and testimony of the experts, unsupervised parenting time with Stanton would endanger the minor child’s physical or emotional health and would likely impair the child’s emotional development. In making this finding, the district court specifically considered Stanton’s “unilateral decision to stop parenting time” and his “expulsion from his AA [c]hapter.” The district court also highlighted Stanton’s inability to “sustain and nurture his relationship with [the child] or curb his own worst tendencies,” even while under the scrutiny of the court. Additionally, the district court noted that Stanton’s unlicensed “sober lodge” business operations support its concerns about Stanton’s judgment and ability to safely parent the child. The district court also found that Stanton’s “failure to exercise parenting time for three months affects issues relating to how parenting time will occur going forward,” and that a high degree of supervisory services was in the best interests of the child.

Stanton argues that the district court abused its discretion by making findings of fact that are not supported by the record. He contends that the district court gave “little regard to the evidence presented in support of [Stanton’s] request for equal and unrestricted parenting time.”

The district court's detailed findings are supported by ample evidence in the record. In her thorough child custody and parenting time evaluation, the parenting time evaluator recommended that Stanton have supervised parenting time with the minor child with an option to "motion the [c]ourt for unsupervised parenting time after [the child] reaches the age of 7." She cited police reports indicating that "[the minor child] was present in the house when Mr. Stanton screamed and threw things at Ms. Curran." The parenting time evaluator expressed "serious concerns about Mr. Stanton's ability to adequately monitor [the minor child] in an unsupervised setting." She also noted that Stanton "repeatedly verbally and emotionally abused Ms. Curran" in the presence of the child, "showing no concern about the distress" this caused the child. The parenting time evaluator summarized Stanton's relationship with Curran as "one of coercive controlling violence," and opined that he minimizes the secondhand abuse that the child experienced by living in the home. She stated that "it does not appear that [Stanton] has taken responsibility for his actions." She also raised "serious doubts about [Stanton's] ability to care for the child without supervision" due to "coercive controlling violence and longstanding patterns of antisocial behavior."

Similarly, the psychological evaluator reported that Stanton's "history is marked by a violation of common societal norms, and raises concern about whether he is capable of dealing with the day to day demands of caring for a young child." She also noted that Stanton's inability "to control his verbally abusive tirades in front of [the minor child]," raised "concern about his capacity for self-control." The psychological evaluator indicated that Stanton "showed elevations on verbal expression (lashing out in verbal attacks) and

retaliation (acting in ways to subvert persons he believes have betrayed him)” on an instrument used to evaluate anger disorders. Additionally, she reported that Stanton consistently downplayed his “troubling history of assaultive behavior,” which included “incidents with Ms. Curran, and prior verbal altercations with various persons that resulted in police involvement.”

Two of Stanton’s own family members, Stanton’s sister and stepdaughter, also testified as to Stanton’s violent past. Specifically, his sister testified about a time when Stanton “grabbed [their] mom from behind and was holding a scissors to her neck.” She also testified that she remembered Stanton “pushing his wife and a lot of screaming” during Stanton’s prior marriage.

His stepdaughter testified that Stanton once “got angry,” threw a pot or pan at her leg, and “broke the blood vessels” in her leg. She also testified about a time during a family Christmas event when she had to prevent the minor child, who was not yet skilled at climbing stairs, from walking up the stairs because she did not “believe [her] dad was watching [the child].” She further testified about a time when Stanton “slammed the door” on her when “he had [her mom] by the neck in the corner of the room up against a wall.”

The record is replete with instances of Stanton’s inability to curb his volatile, violent, and abusive tendencies in the presence of children, as well as of his otherwise irresponsible behavior. Although he testified that he has been sober for 18 years, Stanton is a recovering alcoholic. Stanton did not dispute Curran’s testimony that he never had responsibility for the minor child’s care overnight without another adult present. Shortly before the dissolution trial, after a woman asserted that Stanton made unwelcome sexual

advances toward her while physically blocking her from leaving a room, Stanton's Alcoholics Anonymous group obtained a notice of trespass against him to exclude him from the premises. Further, Stanton admitted that he runs his sober lodge program in his home without zoning approval, formal training, licensure, or medical supervision. He also admitted that he has purchased and provided alcohol to an individual as part of the home detoxification program. This evidence in the record supports the district court's findings that (1) unsupervised parenting time with Stanton would endanger the minor child's physical or emotional health and would likely impair the child's emotional development, and (2) a high degree of supervisory services was in the best interests of the child.

The record indicates that the district court's findings were supported by the evidence and were not clearly erroneous and that the district court properly applied the law by considering the best interests of the minor child. Therefore, the district court did not abuse its discretion by ordering Stanton's parenting time to be in a highly supervised setting until the child attains the age of eight, which will occur in November 2022.

III. The district court did not abuse its discretion in defining the scope of the parenting consultant's duties and responsibilities.

Stanton argues that the district court exceeded the authority given to it by the parties' stipulation in establishing the powers and limitations of the limited-scope parenting consultant. Courts favor the use of stipulations in dissolution cases as a means of simplifying and expediting litigation. *Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). As a result, stipulations are accorded the sanctity of binding contracts. *Id.* The interpretation of stipulations in a dissolution judgment is a question of law subject to de

novo review, and we do not defer to the district court's interpretation of a stipulated provision in a dissolution decree. *Grachek v. Grachek*, 750 N.W.2d 328, 331 (Minn. App. 2008), *review denied* (Minn. Aug. 19, 2008). We construe a stipulation using the ordinary rules of contract interpretation. *Blonigen v. Blonigen*, 621 N.W.2d 276, 281 (Minn. App. 2001), *review denied* (Minn. Mar. 13, 2001). "We review the language of a contract to determine the intent of the parties." *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 832 (Minn. 2012). When the language of a contract is clear and unambiguous, we construe it according to its plain meaning. *Starr v. Starr*, 251 N.W.2d 341, 342 (1977).

The parties agreed, in a post-trial stipulation, that the district court had authority to appoint a parenting consultant and to determine the powers of the consultant. Stanton argues that the district court exceeded the authority given to it by the parties' stipulation "by rubber-stamping the limited scope proposed by [r]espondent's counsel." But the plain language of the parties' stipulation places no limits on the district court's authority to determine the powers of the parenting consultant. The parties clearly expressed their intent to give the district court "the power to determine the authorities (and limitations thereon) of the [p]arenting [c]onsultant." The district court exercised its broad authority by appointing a limited-scope parenting consultant, which falls within the power granted to it by the parties' stipulation. The district court's appointment also followed the recommendation of the parenting time evaluator who testified that the appointment of a parenting consultant with broad powers would create opportunities for Stanton to engage with Curran in ways that could be harmful.

Because the district court acted within the scope of the power given to it by the parties' stipulation, it did not abuse its discretion in defining the scope of the parenting consultant's duties and responsibilities.

IV. The evidence in the record sustains the district court's determinations that certain items were marital property.

Stanton challenges the district court's determination that the parties' homestead, their joint signature Wells Fargo account, and a Honda motorcycle were marital property. Appellate courts independently review whether property is marital or nonmarital, but in doing so must defer to the district court's finding of fact. *Olsen v. Olsen*, 562 N.W.2d 797, 800 (Minn. 1997). A district court's finding of fact is clearly erroneous "if we are left with the definite and firm conviction that a mistake has been made . . . notwithstanding the existence of evidence to support such findings." *Id.* (quotation omitted).

All property acquired during a marriage is presumed to be marital; property acquired before the marriage is nonmarital. Minn. Stat. § 518.003, subd. 3b (2018); *Antone v. Antone*, 645 N.W.2d 96, 100–01 (Minn. 2002). To overcome the presumption that property acquired during a marriage is marital, a party must show by a preponderance of the evidence that the property is nonmarital. *Baker v. Baker*, 753 N.W.2d 644, 649 (Minn. 2008). Nonmarital property includes property acquired during a marriage that was a gift made by a third party to one spouse only. Minn. Stat. § 518.003, subd. 3b(a) (2018).

"The most important factor in determining whether a gift is marital or nonmarital is the donor's intent." *Olsen*, 562 N.W.2d at 800. To constitute a valid gift inter vivos, the donor must intend to make a gift, the property must be delivered, and the donor must

absolutely dispose of the property. *Oehler v. Falstrom*, 142 N.W.2d 581, 585 (1966). “Although the issue of intent typically concerns whether the donor intended a gift at all, it logically follows that the identity of the donee also turns on the donor’s intent.” *Olsen*, 562 N.W.2d at 800. Questions of intent are fact questions. *Oehler*, 142 N.W.2d at 585. “Donative intent is demonstrated by the surrounding circumstances, including the form of the transfer.” *Olsen*, 562 N.W.2d at 800.

The parties do not dispute that the homestead was purchased using proceeds from the sale of a condominium, which was a gift from Stanton’s father, James Stanton. The issue is whether the homestead was gifted to only Stanton, and not Curran, and is thus properly classified as Stanton’s nonmarital property.

In this case, Stanton has the burden of proving the property was nonmarital. See *Baker*, 753 N.W.2d at 649. Stanton argues that the parties’ homestead and their joint signature Wells Fargo account were his nonmarital property because they were purchased or funded with proceeds from the sale of the condominium, which Stanton claimed was solely his nonmarital property. To support his argument that this property was his nonmarital property, Stanton cites the following evidence: (1) his father’s amended trust document, (2) an affidavit by his father’s tax preparer, (3) evidence as to his father’s tax planning intentions, and (4) a claim that his father suffered “a brain bleed stroke.” But the record contains none of this evidence.

The record does, however, include the following evidence supporting Curran’s argument that the property was marital: (1) a warranty deed transferring the condominium and naming both parties as grantees, (2) James Stanton’s gift tax return identifying the

parties as coequal donees of his gift, and (3) James Stanton's own affidavit indicating that he intended the condominium to be a joint gift to both parties, which was accepted into the district court record by stipulation.

This evidence shows that the district court's finding that James Stanton intended to gift the condominium to both parties is not clearly erroneous. Since donative intent is the most important factor in determining whether a gift is marital or nonmarital, we affirm the district court's determination that the condominium was marital property. Because Stanton failed to show that the condominium was his nonmarital property, his derivative claims that the homestead and the Wells Fargo account are also his nonmarital property also fail. The evidence in the record supports the district court's rejection of Stanton's nonmarital property claims, and the district court did not err in determining that the parties' homestead and their joint signature Wells Fargo account were marital property.

Stanton also argues that the Honda motorcycle is his nonmarital property because he purchased it using his retirement fund. However, Stanton made no claim that the motorcycle was nonmarital property in his parenting/financial disclosure statement or at trial. Because Stanton failed to show that the motorcycle was his nonmarital property, the district court did not err in determining that it was marital property.

V. The district court did not abuse its discretion when it awarded respondent \$200,000 in need-based and conduct-based attorney fees and costs.

Stanton argues that the district court abused its discretion by awarding Curran \$200,000 in need-based and conduct-based attorney fees.

Stanton first challenges the district court's award of \$100,000 in need-based attorney fees to Curran. In a marriage dissolution action, a district court "shall" award need-based attorney fees where it finds that (1) the fees are necessary to a party's good-faith claim "and will not contribute unnecessarily to the length and expense of the proceeding," (2) the party from whom fees are sought has the means to pay, and (3) the party who seeks the fees does not have the means to pay them. Minn. Stat. § 518.14, subd. 1 (2018). In determining a party's ability to pay attorney fees, a court may consider a party's nonmarital property. See *Berenberg v. Berenberg*, 474 N.W.2d 843, 849 (Minn. App. 1991), *review denied* (Minn. Nov. 13, 1991). We review the district court's decision to award need-based attorney fees for an abuse of discretion. *Schallinger v. Schallinger*, 699 N.W.2d 15, 24 (Minn. App. 2005), *review denied* (Minn. Sept. 28, 2005).

In its analysis of need-based attorney fees and costs, the district court considered the statutory elements outlined in Minn. Stat. § 518.14, subd. 1. Concerning the first element, the district court found Curran's attorney fees and costs of \$242,096.59 "to have been reasonable and necessary in order to allow [her] to carry on this proceeding, to pursue her own legitimate and appropriate requests and to defend against positions, often unreasonable and unsupported by the facts or law, pursued by [Stanton]." The district court based its assessment upon a long list of facts, concluding that (1) Curran's counsel's hourly rate of \$400 was reasonable; and (2) "given the relative number of hours devoted by each billing attorney to that attorney's client between February 2017 [and] February 2019 (468 hours for Stanton and 352 for Curran), there is no legitimate question that can be raised as to the reasonableness of [Curran]'s fees."

Regarding the second element of Minn. Stat. § 518.14, subd. 1, the district court found that despite Stanton's unemployment, he "is in a unique position to make a substantial contribution to [Curran's] fees . . . due to the fact that there is no dispute that he is on the brink of receiving, within very short order, an inheritance in the neighborhood of" \$4 million to \$4.5 million. In assessing Stanton's ability to pay Curran's attorney fees, the district court also considered "the sizable savings [Stanton] experienced by being charged only \$175 per hour by his attorney for the bulk of this proceeding" and "the fact that [Stanton] is entitled to one-half of the equity in the marital homestead."

Turning to the third element of Minn. Stat. § 518.14, subd. 1, the district court found that Curran "is in need of a substantial contribution" from Stanton to cover the fees and costs she incurred over the course of the proceedings. The district court also found that "it would be utterly unfair and inequitable to allow [Curran] to exit this proceeding heavily encumbered [by] the debt she has had to incur to pay the fees and the loss of her premarital asset (the \$41,000.00 owed to her by her first husband, which funds were used to pay fees in this proceeding), while allowing [Stanton] to exit this proceeding a millionaire."

The district court's findings are supported by abundant evidence in the record. Curran submitted three separate affidavits detailing the \$170,000 she had already paid in attorney fees and costs throughout the domestic abuse and dissolution proceedings. Although Curran made payments on this bill through June 2019, these payments were only made possible by Curran incurring debt totaling \$72,599.15, using funds owed to her by her ex-husband as her share of the marital property, and taking distributions from the parties' Wells Fargo dual signature account. This evidence supports the district court's

finding that Curran does not have the ability to pay her attorney fees and costs using her limited income.

In contrast, Stanton acknowledged at trial that he would soon receive an inheritance of \$4 million to \$4.5 million. Per the district court's judgment and decree, he is to also receive one-half of the proceeds from the sale of the parties' marital homestead. Finally, an affidavit submitted by Stanton's previous counsel indicates that Stanton paid his previous counsel \$175 per hour in attorney fees until October 2018, which is a significant discount from that attorney's standard rate of \$350 per hour. This evidence supports the district court's finding that Stanton does have the ability to pay Curran's attorney fees.

Stanton also challenges the district court's award of \$100,000 in conduct-based attorney fees to Curran. A district court may also impose conduct-based attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. Conduct-based attorney fees may be "based on the impact a party's behavior has had 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 an award of conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

In its decision to award Curran conduct-based attorney fees, the district court cited another long list of considerations: (1) Stanton's "failure to timely participate in the custody evaluation" and repeated requests for continuances of the final trial; (2) Stanton's failure to "concede significant issues until trial," despite the district court's observation "that he had no true good faith basis for challenging such matters"; (3) the "unnecessary amount of

time” Stanton spent “challenging and cross-examining the jointly-commissioned neutral experts whose reports [Stanton] had” for almost a year; (4) Stanton’s repeated objections that lacked specificity or any reference to the applicable rules of evidence or law; (5) Stanton’s failure to meet deadlines throughout the course of the proceedings; and (6) Stanton’s failure to provide material testimony or evidence on heavily contested issues.

Curran’s counsel submitted affidavits, which are part of the record, meticulously detailing instances in which Stanton’s behavior lengthened proceedings and made them more expensive. For example, Stanton’s counsel objected to nearly all of more than 130 exhibits proposed by Curran, including the parties’ tax returns, the parties’ checking account statements, and documents relating to the sale of property. In the objection letter, Stanton’s counsel referenced no rules of evidence or legal authority. Curran’s counsel stated that she had to spend an “extraordinary amount of time” by preparing a 33-page table that detailed responses to each objection. Curran’s counsel also noted that she incurred additional attorney time in responding to the “spurious objections” to her proposed witnesses by Stanton’s counsel. This evidence supports the district court’s conclusion that Stanton unreasonably contributed to the length or expense of the proceeding.

The district court can consider the entire record when making a determination on an award of attorney fees. *See Moore v. Moore*, 734 N.W.2d 285, 289 (Minn. App. 2007), *review denied* (Minn. Sept. 18, 2007). Viewing the record as a whole, the district court determined that it was reasonable for Stanton to pay Curran \$200,000 in attorney fees. Because the district court based its award on detailed findings of fact supported by the

record, the district court did not abuse its discretion in awarding need-based or conduct-based attorney fees to Curran.

VI. The district court did not abuse its discretion by ordering that \$50,000 be sequestered from Stanton’s estate to secure payment of future child support.

Stanton argues that the district court abused its discretion when it ordered that \$50,000 be sequestered from his estate to secure future child support payments. A court may require an obligor to provide sufficient security to ensure payment of child support or spousal maintenance. Minn. Stat. § 518A.71 (2018). We review the district court’s decision to impose a security requirement for an abuse of discretion, which can occur when the district court resolves a discretionary question in a manner “that is against logic and the facts on record.” *Hunley v. Hunley*, 757 N.W.2d 898, 900 (Minn. App. 2008) (quotation omitted). When addressing whether to require security for an obligor’s obligation, the district court may consider such factors as age, work experience, earning capacity, and any other relevant circumstance. *Kampf v. Kampf*, 732 N.W.2d 630, 635 (Minn. App. 2007), review denied (Minn. Aug. 21, 2007).

The district court found that it was “fair and appropriate” to sequester \$50,000 from the sales proceeds of Stanton’s estate “in light of the extraordinarily high conflict in this case, [Stanton’s] accumulated arrearages, the fact that [Stanton] has demonstrated no effort to obtain remunerative employment or to engage in any other activities that would . . . provide him with an income source from which child support could be collected.” Stanton does not dispute that he did not make his child support payments and child related expenses in April or May of 2019. Instead, he argues that his life insurance policy provided adequate

security for his child support obligations, but the record did not show that any such life insurance policy existed at the time of trial.

Because the district court's determination that it was "fair and appropriate" to sequester \$50,000 from the sales proceeds of Stanton's estate was based on numerous findings of fact supported by the record evidence, the district court did not abuse its discretion on this issue.

VII. The district court did not abuse its discretion by retroactively ordering child support.

Stanton challenges the district court's retroactive child support award of \$8,502 to Curran. We will reverse a child support order if we conclude that the district court resolved a discretionary question in a manner that is against logic and the facts on record. *Putz v. Putz*, 645 N.W.2d 343, 347 (Minn. 2002).

Under Minn. Stat. § 518A.39, subd. 2(f) (2018), "[a] modification of support or maintenance . . . may be made retroactive only with respect to any period during which the petitioning party has pending a motion for modification but only from the date of service of notice of the motion." That statute, which only pertains to modifications of orders or decrees, is not implicated here.

Rather, the statute that controls this issue is Minn. Stat. § 518.131, subd. 5 (2018), pertaining to the duration of temporary orders. While this statute does not explicitly provide for retroactive child support orders, it does not in any way *limit* a court's ability to amend a temporary order by awarding retroactive child support in a final dissolution order, *In re J.M.K.*, 507 N.W.2d 459, 461 (Minn. App. 1993), indicating only that a temporary

order continues “in full force and effect until the earlier of its amendment or vacation, dismissal of the main action or entry of a final decree of dissolution or legal separation.” Minn. Stat. § 518.131, subd. 5. Thus, under Minn. Stat. § 518.131, subd. 5, a district court may, in its discretion, award retroactive child support by amending a temporary order in a final dissolution order.

This conclusion is consistent with Minnesota case law. In *Butt v. Schmidt*, the Minnesota Supreme Court held that the district court did not err by failing to apply its permanent child support order retroactively because the appellant failed to raise the issue at any time during his dissolution proceedings, but also acknowledged that the appellant “could have moved to amend or vacate the temporary order anytime before the court entered its final decree, and if he had done so, the modification statute would have allowed for retroactive application.” 747 N.W.2d 566, 579 (Minn. 2008). The supreme court focused its analysis on the modification of orders and decrees pursuant to motions for modification, but did not reach the issue of whether or not Minn. Stat. § 518.131, subd. 5, limits a court’s ability to amend a temporary order by awarding retroactive child support in a final dissolution order. See *id.* Similarly, in *In re J.M.K.*, we quoted Minn. Stat. § 518.131, subd. 5, to support our conclusion that while courts may not impose retroactive child support pursuant to motions to show cause, such obligations may be imposed under Minn. Stat. § 518.131, subd. 5. 507 N.W.2d at 461.

Minnesota case law also supports a conclusion that a retroactive child support award may cover the period of time between the parties’ separation and the district court’s original temporary order setting child support. *Korf v. Korf*, 553 N.W.2d 706, 710–11 (Minn. App.

1996) (allowing the district court to award child support retroactively by considering all payments made since the parties' separation); *see also Jacobs v. Jacobs*, 309 N.W.2d 303, 305 (Minn. 1981) (holding that "a parent's obligation to support his child commences with the child's birth"). In *Korf*, we recognized that *Jacobs* "cannot be used to claim that retroactive child support can go back years and years," and that a district court generally "may not order retroactive child support for dates prior to the commencement of an action under chapter 518." *Korf*, 553 N.W.2d at 710. However, we also clarified that the district court is still "free to apply the *Jacobs* admonition that a parent's child support responsibilities begin at the child's birth" by ordering retroactive child support dating back to the parties' date of separation in a final decree. *Id.* The district court ordered Stanton to pay \$8,502 in equitable child support reimbursement to Curran for the period between April 2017, the first full month of the parties' separation and the month after the parties' second dissolution proceeding commenced, and May 1, 2018, the effective date of Stanton's temporary basic support obligation. The district court found this amount to be "fair and equitable" based on its findings supported by the record that (1) Stanton "provided no support for the benefit of the minor child through any other mechanism" during the period at issue, and (2) Stanton "made no contribution to maintaining the marital asset of the homestead" during that same period.

Stanton argues that the district court abused its discretion by not considering that (1) he paid many of Curran's expenses pending a final disposition, and (2) the district court ordered him to "continue payments for home maintenance, property tax, property insurance, and home association" fees, despite being excluded from the homestead.

However, there is no evidence in the record that Stanton made any such payments toward homestead expenses, and he did not object to Curran's testimony that he made no contribution to her expenses or those of the minor child prior to the issuance of the district court's August 6, 2018 temporary order. Also, Stanton's inheritance would provide him more than enough funds to pay \$8,502 in equitable child support.

Because this case does not involve a motion for modification, the district court was free to amend its temporary order in its final dissolution order by awarding retroactive child support for the time period dating back to the parties' separation. Given the evidence in the record supporting the district court's findings, the district court did not abuse its discretion by retroactively ordering Stanton to pay \$8,502 in child support to Curran.

VIII. The district court did not abuse its discretion when it ordered Stanton to reimburse Curran for supervised parenting time paid for by Curran.

Stanton argues that the district court abused its discretion when it ordered Stanton to reimburse Curran in the amount of \$20,000 for supervised parenting time paid for by Curran. But we do not reach the merits of his argument here because we generally do not consider arguments raised first on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1998). Stanton failed to raise and preserve his arguments on this issue by presenting them to the district court, and his arguments on appeal are therefore forfeited.

IX. The issue of whether the district court presided over the parties' marriage dissolution proceedings in a fair and impartial manner is not properly before this court.

Stanton argues that the district court judge was biased against him, thereby depriving him of a fair and impartial hearing. However, there is nothing in the record to

suggest that Stanton challenged the impartiality of the district court presiding judicial officer at any time prior to or during trial, or in his post-trial motion for amended findings. Because Stanton did not raise this issue at the district court, is not properly before this court for review, and we will not address it. *See id.*

Affirmed.