

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0539**

In re the Marriage of:
Donald Wayne Leeke, petitioner,
Appellant,

vs.

Susan Lynn Webb Leeke, n/k/a Susan Lynn Leeke,
Respondent.

**Filed April 4, 2022
Affirmed in part, reversed in part, and remanded
Frisch, Judge**

Dakota County District Court
File No. 19AV-FA-12-1083

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Considered and decided by Gaïtas, Presiding Judge; Frisch, Judge; and Halbrooks,
Judge.*

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant appeals the district court's modification of his child-support obligation,
denial of reimbursement of excess payments made to respondent, and award of both need-

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

and conduct-based attorney fees to respondent. We affirm in part, reverse in part, and remand.

FACTS

In November 2012, the district court entered a stipulated judgment (the judgment) dissolving the marriage of appellant Donald Wayne Leeke (father) and respondent Susan Lynn Leeke (mother), which awarded the parties joint legal custody of their twin son and daughter, with mother having primary custody and father receiving parenting time on a regular basis. In 2013, the district court calculated father's child-support obligation to mother at \$1,752 per month.

In February 2019, father stopped exercising parenting time with daughter. Father continued to exercise his regular parenting time with son. Between March and September 2019, father sent to mother \$1,200 in excess child-support payments.

In September 2019, mother brought a motion to modify father's custody and parenting time of daughter and to modify father's child-support obligation. In February 2020, mother amended her motion to include claims for unreimbursed expenses related to the children. Mother also sought attorney fees.

The district court held a motion hearing in March 2020. At the hearing, father expressed his willingness to settle some of the claims related to expenses he had failed to pay mother and the district court directed the parties to enter into a stipulated agreement as to issues not in dispute. The parties resolved a majority of the expense disputes by stipulation and father agreed to pay mother \$7,276.57. But six issues remained unresolved: custody modification, child-support modification, a \$200 babysitting expense, expenses

related to a co-parenting expense tracking program, the repayment of the \$1,200 paid to mother in excess of father's child-support obligation, and attorney fees.

In July 2020, the district court entered an order, in relevant part, granting mother's request to increase father's child-support obligation, denying father's request for reimbursement of \$1,200, and awarding mother attorney fees. The order contained no findings of fact or conclusions of law, did not identify an effective date for the application of father's child-support modification, and did not include the amount of attorney fees awarded to mother or the basis for an award of such fees.

Father filed a motion seeking additional and amended findings of fact. Mother also filed a motion for amended findings to clarify the effective date for the child-support modification and for specification of the attorney-fees award. In December 2020, a different district court judge held a hearing to decide these motions.¹

In February 2021, the district court issued amended findings of fact and conclusions of law. It found in relevant part that modification of father's child-support obligation was justified due to father not exercising parenting time with daughter and that an upward deviation from the child-support guidelines was appropriate, that father was not entitled to reimbursement of the \$1,200 because those payments were intended to compensate mother for father not exercising any parenting time with daughter, and that mother was entitled to both need- and conduct-based attorney fees based on the disparity in income between the parties and other actions taken by father. Father appeals.

¹ The district court judge that presided over the initial hearing had retired, necessitating a reassignment of this matter to a new district court judge.

DECISION

I. The district court made insufficient factual findings to justify its calculation of the parenting-expense adjustment.

Father challenges the district court's order increasing his child-support obligation, arguing that in calculating the obligation, the district court impermissibly relied on assumptions unrelated to the parenting time set forth in the judgment. The district court has broad discretion to determine the appropriate support of the parties' children, and we will only reverse such a determination for an abuse of that discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender v. Bernhard*, ___ N.W.2d ___, ___, No. A20-1234, slip op. at 8 (Minn. Mar. 9, 2022) (quotation omitted).

After computing each parent's basic support obligation pursuant to Minn. Stat. § 518A.34 (2020), the district court must apply the parenting-expense adjustment calculation, which reflects the presumption that a parent exercising their parenting time incurs childcare costs. Minn. Stat. § 518A.36, subs. 1(a), 2 (2020). In so doing, the district court must make findings regarding "the approximate number of annual overnights the child or children will likely spend" with each parent. *Id.*, subd. 2(b)(1), (2).

The district court did not make factual findings regarding the approximate number of annual overnights daughter would likely spend with father. The district court instead "assumed" that father spent 120 overnights per year with son and none with daughter and based its calculations on that assumption. The district court must make findings to "permit

reasoned appellate review” and to ensure that “the relevant statutory factors have been addressed.” *Hesse v. Hesse*, 778 N.W.2d 98, 104 (Minn. App. 2009) (citing *Rosenfeld v. Rosenfeld*, 249 N.W.2d 168, 171 (Minn. 1976)). An assumption is not a finding that is susceptible to meaningful review. We must therefore remand this issue to the district court to make explicit findings as to the approximate number of annual overnights daughter will likely spend with father and to use that number to calculate the parenting-expense adjustment, if any. To be clear, once the district court determines the proper adjustment and calculates the presumptively appropriate child-support obligation, the district court may, in its discretion, deviate from this total if it believes it should do so and makes the required findings.² Minn. Stat. §§518A.37, subd. 2, .43, subd. 1 (2020).

² We note that at oral argument, both parties made cursory reference to the effect certain statutory amendments may have on the calculation. But this issue was not presented to the district court, nor was it briefed on appeal, and we therefore do not consider it. Because the post-amendment interpretation of Minn. Stat. § 518A.36 (2020) was not argued before the district court, the issue was not considered by the district court, and because the issue was not briefed on appeal, we decline to consider this issue. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally consider only those questions previously presented to and considered by the district court); see *State, Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to review questions that were not adequately briefed); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). On remand, however, the parties may present argument to the district court regarding their interpretation of Minn. Stat. § 518A.36 and whether the amended statute requires the number of overnights to be calculated based on the number of overnights set forth in the judgment or based on father’s actual exercise of parenting time.

II. The district court did not abuse its discretion by denying father a reimbursement for the \$1,200 he paid to mother.

Father argues that the district court abused its discretion by declining to apply a \$1,200 credit to his child-support obligations or other child-related expenses based on a series of extra payments father made to mother before mother filed her motion in this case.

It is within the district court's authority to grant equitable relief. *Bauerly v. Bauerly*, 765 N.W.2d 108, 111 (Minn. App. 2009) (citing *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981)). We review a district court's award of an equitable remedy for an abuse of discretion. *Metro. Life Ins. Co. v. Belland*, 583 N.W.2d 592, 593 (Minn. App. 1998) (citing *City of Cloquet v. Cloquet Sand & Gravel, Inc.*, 251 N.W.2d 642, 644 (Minn. 1977)). The district court must also support its decision with specific findings justifying equitable relief. *Nelson v. Nelson*, 384 N.W.2d 468, 471 (Minn. App. 1986).

Here, the district court rejected father's argument that the additional payments were to offset the payment of other expenses. By doing so, it implicitly credited mother's argument that these payments were to compensate her because father no longer exercised parenting time with daughter. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) ("The district court's findings implicitly indicate that the district court found respondent's testimony credible. We defer to this credibility determination."); *Haefele v. Haefele*, 621 N.W.2d 758, 763 (Minn. App. 2001) ("Where evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on the credibility of the witnesses. We give district courts broad discretion precisely because they are in the best position to determine which witnesses are credible." (citation omitted)),

rev. denied (Minn. Feb. 21, 2001). We see no abuse of discretion by the district court in choosing to credit mother's explanation for the \$1,200 payments by father as opposed to father's explanation for these payments.

III. The district court abused its discretion by awarding need-based attorney fees to mother but acted within its discretion by awarding conduct-based attorney fees to mother.

Father argues that the district court abused its discretion by awarding need- and conduct-based attorney fees to mother. A district court has discretion to award need-based or conduct-based attorney fees, and we will not reverse a district court's award of attorney fees absent an abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999); *see* Minn. Stat. § 518.14, subd. 1 (2020). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Bender*, ___ N.W.2d at ___, No. A20-1234, slip op. at *8 (quotation omitted). Here, father challenges the district court's finding that mother was entitled to a lump-sum fee award of \$5,000, representing both need- and conduct-based attorney fees.

Need-Based Attorney Fees

The party seeking need-based attorney fees must prove that

(1) the fees are necessary for the good-faith assertion of the party's rights . . . 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 them, and (3) the party to whom fees are awarded does not have the means to pay them.

Phillips v. LaPlante, 823 N.W.2d 903, 907 (Minn. App. 2012); *see also* Minn. Stat. § 518.14, subd. 1.

“Conclusory findings on the statutory factors do not adequately support a fee award.” *Geske v. Marcolina*, 624 N.W.2d 813, 817 (Minn. App. 2001). However, failure to make specific findings is not fatal to an award “where review of the order ‘reasonably implies’ that the district court considered the relevant factors and where the district court ‘was familiar with the history of the case’ and ‘had access to the parties’ financial records.’” *Id.* (quoting *Gully*, 599 N.W.2d at 825-26). “When an attorney-fee award turns on the construction and application of a statute, it presents a question of law, which is reviewed *de novo*.” *Sanvick v. Sanvick*, 850 N.W.2d 732, 737 (Minn. App. 2014).

The district court did not make sufficient findings to justify an award of need-based attorney fees.³ Instead, the district court found that, with an annual income of \$144,000, mother’s financial needs were not as significant as those of other litigants, but considering father’s annual income of over \$700,000, mother had a “relative” need for attorney fees. Such a finding is an insufficient basis to award need-based attorney fees. *Geske*, 624 N.W.2d at 817 n.2 (noting that, after 1990 amendment of the attorney-fee statute, the mere existence of a disparity in income, without a finding that the recipient cannot afford attorney fees, is an inadequate basis for a fee award under Minn. Stat. § 518.14). In addition, the district court made no findings regarding the current annual expenses of the parties, and the record does not contain such evidence. In the absence of such findings, the district court was unable to determine whether mother has the means to pay her attorney

³ We observe that the presiding district court judge was only recently assigned to the case, and he therefore understandably lacked familiarity with the parties, their respective circumstances, and their lengthy litigation history.

fees. *See id.* at 818 (remanding because district court made insufficient findings to support a need-based award when it failed to consider the expenses of one of the parties). We therefore remand the issue of need-based attorney fees to the district court for appropriate findings, and the district court may, in its discretion, reopen the record to facilitate such findings.⁴

Conduct-Based Attorney Fees

A district court may exercise its discretion to 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. Generally, conduct-based fees are based on conduct occurring during the course of litigation. *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016).

The district court must make findings that explain the basis for an award of conduct-based attorney fees. *Brodsky*, 733 N.W.2d at 477. The party moving for attorney fees has the burden to show that the conduct of the other party warrants an award. *Baertsch*, 886 N.W.2d at 238. We review an award of conduct-based attorney fees for an abuse of discretion. *Sanvik*, 850 N.W.2d at 737.

⁴ Father argues that mother’s motion for attorney fees did not comply with the requirements of Minn. R. Gen. Prac. 119.02 because she “failed to provide a description of each item of work performed, the date upon which it was performed, and the amount of time spent on each item of work.” Because we remand to the district court to make threshold findings of whether mother is entitled to need-based fees, we defer to the discretion of the district court as to whether to reopen the record to allow mother to supplement her application for fees in accordance with Rule 119.

Here, the disputes giving rise to the motion hearing before the district court originated from father's choice not to exercise any parenting time with daughter. This choice manifested itself in several issues that the district court was ultimately forced to decide. Although the parties ultimately settled some of the contested issues before the district court issued its ruling, not all of the issues were resolved. One of the remaining disagreements was related to father's refusal to exercise his designated parenting time with daughter during spring break, necessitating a \$200 babysitting fee that father refused to pay. Another dispute arose when father was banned from daughter's volleyball games and thereafter refused to pay his share of activity fees for her continued participation on the team. The district court found that father's conduct giving rise to these and other remaining contested disputes unnecessarily contributed to the length of the proceeding and caused mother to incur fees to litigate issues on which she was largely correct. These factual findings are well-supported by the record, and it was not an abuse of discretion for the district court to determine that an award of conduct-based attorney fees to mother was appropriate.

The district court, however, abused its discretion by combining need- and conduct-based fees in a single award, without designating those amounts of the award as need- or conduct-based. Because we remand to the district court to make findings as to whether need-based attorney fees are appropriate, we cannot affirm the totality of the lump-sum fee award and must remand to the district court to separately specify its award of conduct-based attorney fees.

Affirmed in part, reversed in part, and remanded.