STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0616

In re the Marriage of:
Laura Marie Knutsen, petitioner,
Appellant,

vs.

Peter Nels Knutsen,
Respondent.

Filed December 19, 2022
Affirmed in part, reversed in part, and remanded; motions denied
Ross, Judge

Hennepin County District Court
File No. 27-FA-21-4113

Michael P. Boulette, Seungwon R. Chung, Laura E. Kvasnicka, Taft Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

Sam E. Khoroosi, M. Sue Wilson, Jessica M. Heuer, M. Sue Wilson Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

The current issues in this divorce case involve the priority of jurisdiction between courts of two states. Husband moved to dissolve the parties' thirty-year marriage in Oklahoma, and four weeks later wife petitioned to do the same in Minnesota. The

Minnesota district court dismissed wife's petition, determining that it could not exercise jurisdiction under the first-to-file rule, the Uniform Interstate Family Support Act, and the Uniform Child Custody Jurisdiction and Enforcement Act. It also found that wife, by filing in Minnesota, improperly engaged in forum-shopping, and it awarded husband conduct-based attorney fees on that basis. The district court properly declined to exercise jurisdiction over the child-support aspect of the parties' dispute but improperly dismissed wife's petition on jurisdictional grounds and improperly ordered her to pay conduct-based attorney fees. We therefore affirm in part, reverse in part, and remand.

FACTS

Laura and Peder[1] Knutsen wed in Ramsey County about thirty years ago and had three children. The Knutsens lived mostly in Minnesota, but in 2016, Laura and the children moved to Oklahoma. Peder remained in Minnesota. Five years later, Peder petitioned for divorce in Oklahoma. Twenty-six days later Laura petitioned in Minnesota, seeking marital dissolution. Laura's petition asked the district court also to determine child support, child custody, and spousal maintenance.

Peder moved to dismiss the Minnesota action on jurisdictional grounds. Laura moved for temporary financial relief and served Peder with subpoenas for financial information about himself and his businesses. Before the district court heard Peder's

[1] The district court case caption spells respondent's name "Peter," but the parties' briefs identify him as "Peder." We adopt the parties' spelling in the body of our opinion but leave the caption to match the district court's. *See* Minn. R. Civ. App. P. 143.01.

motion, the Knutsens' youngest child (whom we call James for the sake of privacy) turned eighteen.

The district court quashed Laura's subpoenas and granted Peder's motion to dismiss the Minnesota action, relying on three bases. First, it determined that the first-to-file rule gave Peder's Oklahoma action priority over Laura's Minnesota action. Second, it determined that Minnesota lacked jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Interstate Family Support Act because Minnesota is not James's home state. Third, it applied the UCCJEA's "unjustifiable conduct" provision to decline to exercise jurisdiction because of Laura's purported misconduct of evading service and forum-shopping. It also awarded attorney fees to Peder.

Laura appeals.

DECISION

Laura offers six reasons we should reverse the district court's dismissal. She argues that the district court misapplied the first-to-file rule, the doctrine of *forum non conveniens*, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. §§ 518D.101-.317 (2022), and the Uniform Interstate Family Support Act (UIFSA), Minn. Stat. §§ 518C.101-.905 (2022). She also argues that the district court improperly failed to consider her request for an antisuit injunction. And she argues that the district court erroneously awarded conduct-based attorney fees based on her alleged forum-shopping. We need not address all these arguments. For the following reasons, we hold that the

district court wrongly declined to exercise jurisdiction over the Minnesota action as it regards every issue but child support and improperly awarded conduct-based attorney fees.

I

Laura urges us to reverse the district court's decision to dismiss based on the so-called first-to-file rule. The first-to-file rule applies only when different courts have concurrent jurisdiction over actions addressing the same dispute. *Medtronic, Inc. v. Advanced Bionics Corp.*, 630 N.W.2d 438, 448–49 (Minn. App. 2001). It is not really a rule but a principle to be applied flexibly as a "blend of courtesy and expediency." *Id.* at 449 (quotation omitted). When deciding whether to defer to another court, the district court should consider judicial economy, comity between the courts, cost to and convenience for the parties, and the possibility of multiple outcomes. *Id.* The district court must decide which action "will serve best the needs of the parties by providing a comprehensive solution." *Minnesota Mut. Life Ins. v. Anderson*, 410 N.W.2d 80, 82 (Minn. App. 1987) (quotation omitted). We review a district court's application of the first-to-file rule for an abuse of discretion. *Medtronic*, 630 N.W.2d at 449. Laura asks that we reverse the district court's application of the rule, contending that it does not apply because courts in different states lack concurrent jurisdiction. But we need not address that contention because, even assuming that the Oklahoma and Minnesota courts share concurrent jurisdiction, we conclude that the district court abused its discretion by applying the rule in an improperly

strict fashion. Because the district court applied the rule in an improperly strict fashion, we hold that it abused its discretion.

The district court dismissed Laura's petition entirely without first analyzing which action would provide the most comprehensive solution. Precedent offers an exception to this flexible approach in the context of child custody. In *Schmidt v. Schmidt*, the appellant challenged the district court's decision to exercise jurisdiction in a custody dispute over the parties' minor child when the respondent had petitioned for custody in Minnesota before the appellant filed his claim for custody in Georgia. 436 N.W.2d 99, 103 (Minn. 1989). The *Schmidt* court analyzed jurisdiction over the custody dispute under the Uniform Child Custody Jurisdiction Act (UCCJA), the predecessor to the UCCJEA. *Id.* (citing Minn. Stat. § 518A.06 (1988) (repealed 1999)). It reasoned that the UCCJA established a firm "first in time priority" rule, requiring a Minnesota court to stay its proceedings if a custody proceeding is pending in another state. *Id.* at 103–04 (quotation omitted). The district court here relied on *Schmidt*'s strict approach, failing to recognize that the UCCJEA does not apply to this case. Regardless of Laura's reference to custody over James in her petition, by the time the district court dismissed the petition, James had turned eighteen, rendering the UCCJEA inapplicable. *See* Minn. Stat. §§ 518D.102(c) (defining child as an individual under eighteen years old), 518D.102(e) (defining a child-custody proceeding as a proceeding where the custody of a "child" is at issue). Even if *Schmidt*'s UCCJA analysis applies to cases arising under the UCCJEA, the district court abused its discretion by

dismissing the petition based on a statute that, because this case no longer involved a "child" under the UCCJEA, no longer applied here.

II

The district court likewise wrongly based its decision to dismiss the action on the UCCJEA's unjustifiable-conduct provision. Under that provision, the district court must decline to exercise jurisdiction if it "has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct." Minn. Stat. § 518D.208(a). The district court dismissed Laura's petition on its theory that Laura committed unjustifiable conduct by filing her petition in Minnesota while dodging service intended to commence Peder's Oklahoma action, behavior the district court characterized as forum-shopping. Because the UCCJEA does not apply here, the district court wrongly relied on the UCCJEA provision to dismiss the custody component of the action.

III

Laura challenges the district court's award of conduct-based attorney fees premised on her purported forum-shopping in Minnesota and, implicitly, her service-dodging in Oklahoma. We review a district court's award of conduct-based attorney fees ordered under Minnesota Statutes section 518.14, subdivision 1 (2022), for an abuse of discretion. *Sanvik v. Sanvik*, 850 N.W.2d 732, 737 (Minn. App. 2014). A district court abuses its discretion if its factual findings are unsupported by the evidence, it improperly applies the law, or it resolves the question in a manner contrary to logic and fact. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997); *see also Woolsey v. Woolsey*, 975 N.W.2d 502, 506

(Minn. 2022) (reciting this three-part definition of abuse of discretion). Laura's challenge persuades us to reverse.

One of Laura's two contentions prevails. She contends first that the district court lacked the statutory authority to award conduct-based attorney fees, asserting that it had the authority only to award need-based fees. *See* Minn. Stat. § 518.14 (2022). But we do not consider issues that were not raised in and decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because Laura raises this statutory-authority issue for the first time on appeal, we will not consider it. Laura contends second that the district court abused its discretion by basing its fee award on her having filed in Minnesota. We hold that the district court's award constitutes an abuse of discretion. Neither the law nor the facts support the district court's conduct-based attorney-fees award.

Regarding the law, the district court misapplied our explanation in *Reed v. University of North Dakota* that Minnesota does not condone forum-shopping. 543 N.W.2d 106, 108–09 (Minn. App. 1996), *rev. denied* (Minn. Mar. 28, 1996). We discussed and criticized forum-shopping in *Reed* only in the context of addressing which state law should apply, not to assert that any party had engaged in misconduct, let alone misconduct warranting sanctions. *Id.* We recounted that the *Reed* plaintiff had commenced and then voluntarily dismissed an action in federal court before bringing similar actions in two different state courts. *Id.* We said only that the plaintiff's actions left at least "the appearance of forum shopping." *Id.* Laura's filing her action in Minnesota—the state where the couple married, owned a home, raised children, and owned businesses—does not faintly resemble the forum-inspired maneuvering in *Reed*. Without dispute Minnesota has

jurisdiction over the non-custody issues raised in Laura's divorce petition, and Minnesota is the only state where Laura filed her petition.

Regarding the facts, we have emphasized that conduct-based attorney fees may be awarded only for conduct occurring during litigation and only "against a party who unreasonably contributes to the length or expense of *the* proceeding." Minn. Stat. § 518.14, subd. 1 (emphasis added); *see also Geske v. Marcolina*, 624 N.W.2d 813, 819 (Minn. App. 2001). The district court refers to the Oklahoma action (but does not expressly rely on it). The district court did not find, and Peder identifies no evidence that would support a finding, that Laura's filing in Minnesota or conduct in Oklahoma contributed to the length or expense of the Minnesota proceeding. We add that the district court also clearly erred in one of its related factual findings, stating, "After avoiding being served in Oklahoma, [Laura] subsequently filed a Summons and Petition for Dissolution . . . in . . . Minnesota." The record evidence instead undisputedly establishes that Peder did not attempt to serve his Oklahoma petition on Laura until after she filed her Minnesota petition. The conduct-based fee award has no legal or factual support.

IV

Laura unconvincingly argues that the district court erroneously declined to exercise jurisdiction over child support. We believe that the district court acted within its discretion in this regard. If a party files a Minnesota petition for child support after another party files a petition or comparable pleading in another state, the Minnesota court may exercise jurisdiction to establish a support order only if: (1) the petition or comparable pleading was filed before the expiration of the time allowed in the other state for a responsive pleading

challenging the other state's jurisdiction; (2) the contesting party timely challenges jurisdiction in the other state; and (3) if relevant, Minnesota is the child's "home state." Minn. Stat. § 518C.204(a). Because the Oklahoma action was undisputedly filed first and Oklahoma is James's home state, we consider only whether Peder's Oklahoma petition is a "comparable pleading." We hold that it is.

Although neither the statute nor any Minnesota appellate decision defines the term "comparable pleading" in section 518C.204(a), we are satisfied that Peder's Oklahoma pleading is comparable to a petition seeking child support in Minnesota. It is true, as Laura maintains, that Peder's Oklahoma petition did not expressly raise the prospect of child support. But like courts in Minnesota, Oklahoma courts must decide child support when resolving a divorce petition involving parties who have a minor child. Okla. Stat. tit. 43, § 112(A)(1) (2022); Minn. Stat. § 518A.38, subd. 1 (2022). And different states can and do follow different approaches to determine whether the opportunity for child support ends when the child turns eighteen. For example, under Minnesota law, a district court might, under certain circumstances, order child support for a child of majority age. *See* Minn. Stat. § 518A.26, subds. 1, 5 (2022) (defining child for purposes of chapters 518 and 518A to include certain persons over age eighteen). We offer no opinion as to how an Oklahoma court might decide whether and to what extent child support is available, or even whether Oklahoma or Minnesota law should apply to the issue. We say only that the district court appropriately refused to exercise jurisdiction to decide the issue of child support in light of Peder's comparable pleading for child support in Oklahoma, even if an Oklahoma child-support order may be unlikely given James's age.

For these reasons, although the district court properly declined to exercise jurisdiction over Laura's claim for child support, it improperly dismissed her dissolution petition. We reverse the district court's dismissal and remand the case so the district court may (1) retain and exercise its jurisdiction to resolve all issues presented by Laura's petition other than child support; (2) communicate with the Oklahoma court to become and remain informed of the status of the Oklahoma proceedings as they might directly or indirectly affect any issues pending in the Minnesota action; and (3) maintain a record of these communications and promptly inform the parties of them.

V

Peder has moved to strike portions of Laura's reply brief and to supplement the record with documents purportedly filed in Oklahoma. We deny both motions. Regarding the motion to strike, which rests on concerns about the standard of review, each party's principal brief adequately informs the court of the competing positions on our standard of review. Peder unconvincingly relies on Minnesota Rule of Civil Appellate Procedure 110.5 in asking us to supplement the record. That rule "is limited to correction of the record so that it accurately reflects anything of material value that was omitted from the record by error or accident or is misstated in it." *W. World Ins. Co. v. Anothen, Inc.*, 391 N.W.2d 70, 72 (Minn. App. 1986). The proffered supplemental documents do not fit the rule.

Affirmed in part, reversed in part, and remanded; motions denied.