

*This opinion is nonprecedential except as provided by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
A23-1839**

In re the Marriage of:
Valentin Arkadievich Povarchuk, petitioner,
Appellant,

vs.

Rebecca Joyce Povarchuk,
Respondent.

**Filed July 15, 2024
Affirmed
Larson, Judge**

Dakota County District Court
File No. 19AV-FA-16-382

Valentin Povarchuk, Eagan, Minnesota (self-represented attorney)

John DeWalt, Melissa Chawla, Dewalt, Chawla + Saksena, LLC, Minneapolis, Minnesota
(for respondent)

Considered and decided by Larkin, Presiding Judge; Frisch, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

In this third appeal arising from a parenting dispute between appellant-father Valentin Arkadievich Povarchuk and respondent-mother Rebecca Joyce Povarchuk, father challenges a district court's order finding him in civil contempt and imposing fees. We affirm.

FACTS

Valentin and Rebecca were married in 2001.¹ After the parties dissolved their marriage in 2016, they agreed to share joint legal and joint physical custody of their two children and established a parenting plan. *See* Minn. Stat. § 518.1705, subd. 3 (2022) (defining and providing requirements for parenting plans). Following a request to modify the parenting-time provision in the parenting plan, the district court ordered a parenting-time evaluation. The parties later agreed to the parenting-time evaluator's recommendations and to use a parenting consultant (PC) for a three-year term. During this three-year term, the parties requested, and the PC made, approximately 19 determinations related to, among other things, parenting time and activities for the children.

In July 2021, Valentin appealed some of the PC's determinations to the district court. The parties engaged in negotiations and, on June 17, 2022, the district court filed a stipulated order adopting the parties' agreement (June 2022 order). The June 2022 order, in relevant part, provided:

The parties share equally the costs and the benefits of the mutually agreed-upon significant purchases for the children, including, but not limited to, major items of clothing, footwear, and sports equipment. It is understood that the following items are mutually agreed-upon expenses that the parties shall share in:

- i. Summer camps involving expenses up to \$2,000 per parent for each child per year;
- ii. Violin for [A.P.] through 2022-2023 school year;
- iii. Violin for [R.P.] through the 2023-2024 school year; and
- iv. Religious school at Mount Zion temple for both children.

¹ Because the parties share a last name, we refer to them by their first names for clarity.

On November 22, 2022, Rebecca filed a motion asking the district court to, in relevant part, order Valentin to allow the children to participate in specific school and extracurricular activities. On December 5, 2022, Valentin filed a motion requesting the district court modify the parenting-time schedule.

In a December 21, 2022 order, the district court denied Valentin's motion and granted Rebecca's motion (December 2022 order). With respect to Rebecca's motion, the district court ordered that the children continue participating in activities and the parties share the costs. In relevant part, the district court stated:

The parties' minor children, both [A.P.] and [R.P.] . . . shall continue to go to school and/or extracurricular activities including:

- a. Violin lessons with the Northern Lights School for Strings;
- b. At least one sport or exercise activity per season;
- c. Summer camps, specifically including but not limited to, OSRUI and violin camp;
- d. Mount Zion Religious School; and
- e. Membership at the St. Paul JCC.

. . . The parties shall share equally in the costs of all above-mentioned school and/or extracurricular activities.

Valentin appealed and, as relevant here, challenged the district court's decision to grant Rebecca's motion, arguing that "res judicata barred the district court from identifying specific camps and activities for the children in its December 2022 order" when the June 2022 order also "addressed camps and activities." *See Povarchuk v. Povarchuk*, No. A23-0208, 2023 WL 6381567, at *2 (Minn. App. Oct. 2, 2023) (*Povarchuk I*). We affirmed the district court. *Id.* at *5. We concluded that Valentin failed to "analyze the

elements of res judicata,” and, therefore, did not meet his burden to show an error on appeal. *Id.* at *2.² And even construing Valentin’s appeal to challenge the differences between the two orders, we noted that Valentin failed to “explain how the[] specific camps and activities [listed in the December 2022 order] differ[ed] from the general categories of camps and activities identified in the June 2022 order.” *Id.* at *3. Thus, we determined that Valentin did not “demonstrate that the district court’s December 2022 order . . . was barred by res judicata.” *Id.*

According to Valentin, he interpreted our opinion in *Povarchuk I* to mean that he only needed to comply with the June 2022 order, not the December 2022 order. Based on this reading, Valentin concluded that “he ha[d] no obligation to share costs of [A.P.’s] violin training beyond the 2022-2023 academic year and [R.P.’s] training beyond the 2023-2024 academic year, or the costs of camp beyond \$2000 per year, per child.”

In November 2023, Rebecca filed a motion for the district court to hold Valentin in constructive civil contempt for failure to comply with the portion of the December 2022 order related to the children’s activities.³ She also requested that the district court direct

² Regarding Rebecca’s motion, we also rejected an argument from Valentin that the district court lacked legal authority over “the children’s participation in specific camps and activities.” *Povarchuk I*, 2023 WL 6381567, at *3. Moreover, we concluded the district court did not abuse its discretion when it denied Valentin’s motion to modify the parenting-time schedule. *Id.* at *4-5. Valentin filed a second appeal challenging the district court’s denial of his motion to modify custody and the parenting-time schedule, and we affirmed. *See Povarchuk v. Povarchuk*, No. A23-1168, 2024 WL 1047921, at *1-2 (Minn. App. Mar. 11, 2024), *rev. denied* (Minn. May 29, 2024).

³ Rebecca also requested that the district court hold Valentin in constructive civil contempt for failure to comply with a portion of an October 2021 order related to parent coaching. The district court granted this request, and Valentin does not challenge it on appeal.

Valentine to pay \$5,000 for his contempt. Valentin opposed the motion and requested changes to the children's activities.

Following a hearing, the district court granted Rebecca's motion and largely denied Valentin's motion.⁴ The district court determined that Valentin's argument that he only needed to comply with the June 2022 order had "no basis in the record" and was contrary to the June 2022 order, the December 2022 order, and *Povarchuk I*. Notably, the district court found that Valentin did not argue the activities listed in the December 2022 order were not in the children's best interests and, instead, "his argument seem[ed] to be that he found a loophole in the record" that allowed him to avoid sharing costs.⁵ Accordingly, the district court found Valentin in civil contempt pursuant to Minn. Stat. § 588.01, subd. 3 (2022). The district court also ordered that the children continue to participate in the activities listed in the December 2022 order and determined that Valentin would pay his share of the cost for the children's camps. The district court imposed \$10,000 in conduct-based fees against Valentin pursuant to Minn. Stat. § 518.14, subd. 1 (2022), which it ordered would go towards the cost of the children's 2024 summer camps.

Valentin appeals.

⁴ The district court did order Rebecca to provide Valentin with "information necessary to access and regulate the children's [use of] electronic devices." Rebecca does not challenge this decision on appeal.

⁵ At the hearing and in its order, the district court repeatedly expressed its strong concerns about the parties' litigiousness, failure to communicate and compromise on issues regarding their children, and failure to act in their children's best interests. This being our third opinion in this matter in less than nine months, we share the district court's concerns.

DECISION

Valentin challenges the district court's decision to find him in civil contempt. Valentin argues that: (1) he cannot be held in civil contempt for failure to comply with the December 2022 order; (2) the district court erroneously imposed criminal-contempt sanctions; and (3) the district court abused its discretion when it ordered Valentin to pay conduct-based fees pursuant to Minn. Stat. § 518.14, subd. 1.⁶

We review these issues for an abuse of discretion. *See Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019) (contempt); *Sharp v. Bilbro*, 614 N.W.2d 260, 264-65 (Minn. App. 2000) (conduct-based fees), *rev. denied* (Minn. Sept. 26, 2000). “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.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted).

We address each argument in turn.

⁶ Valentin also argues the district court violated his due-process rights because he was denied an impartial decisionmaker. Valentin did not raise this argument in the district court; therefore, it is forfeited. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Responding to Rebecca's argument that Valentin forfeited the issue, in his reply brief Valentin argues we should consider his due-process argument in the interests of justice. *See* Minn. R. Civ. App. P. 103.04. We are not persuaded that we should consider this issue in the interests of justice. *See Morton v. Bd. of Comm'rs*, 223 N.W.2d 764, 771 (Minn. 1974) (declining to consider an argument raised for the first time on appeal where the court did “not feel that appellants' arguments or the peculiar facts of th[e] case justif[ied] a departure from [its] well-settled precedents”).

I.

Valentin argues the district court abused its discretion when it found he failed to comply with the December 2022 order. We are not persuaded.

First, Valentin argues that we concluded in *Povarchuk I* that the December 2022 order merely enforced the June 2022 order and, therefore, he need only comply with the June 2022 order. Valentin mischaracterizes our prior opinion.

In *Povarchuk I*, we addressed Valentin’s argument that res judicata barred the district court from ordering specific camps and activities for the children in the December 2022 order. 2023 WL 6381567, at *2-3. We concluded that Valentin did not meet his burden to show the district court erred. *Id.* We explained that “Valentin [did] not analyze the elements of res judicata to demonstrate that they [were] met. Thus, even if res judicata *could* apply . . . , Valentin ha[d] not shown why it *should* apply and relief [was] not proper on [that] point.” *Id.* at *2. Further, we determined that even if Valentin had made a sufficient argument, he failed to show that the district court abused its discretion. *Id.* at *3. We noted that Valentin failed to explain how the December 2022 order differed “from the general categories of camps and activities identified in the June 2022 order.” *Id.* On these bases, we concluded that Valentin “fail[ed] to demonstrate that the district court’s December 2022 order regarding camps and activities was barred by res judicata.” *Id.* Thus, we affirmed the December 2022 order—meaning it is enforceable.⁷

⁷ We note that, generally, to obtain relief on appeal, a complaining party must show that the district court erred, that the complaining party was prejudiced by the error, and that the prejudice to the complaining party arising from the error was substantial. Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Goldman v. Greenwood*, 748 N.W.2d 279, 285

Second, Valentin contends that, even if the December 2022 order was enforceable under *Povarchuk I*, the district court abused its discretion when it found him in contempt because he plausibly understood *Povarchuk I* to only require him to comply with the specific terms in the June 2022 order. We disagree because Valentin does not set forth a reasonable interpretation of *Povarchuk I*. Fundamentally, we affirmed the district court’s decision to issue the December 2022 order because Valentin failed to meet his burden to show the district court abused its discretion. *See Povarchuk I*, 2023 WL 6381567, at *2-4. There is no reasonable reading of *Povarchuk I* that would have relieved Valentin of his obligation to comply with the district court’s December 2022 order.

Third and finally, Valentin reasserts the argument he raised in *Povarchuk I* that the district court’s decision to issue the December 2022 order is barred by res judicata to the extent it conflicted with the June 2022 order. Rebecca asserts that Valentin’s argument is barred because Valentin raised the same issue in his prior appeal.⁸ We agree with Rebecca.

The supreme court has held in the family law context that “an adjudication on the merits of an issue is conclusive, and should not be relitigated.” *Loo v. Loo*, 520 N.W.2d

(Minn. 2008) (applying rule 61 in a family appeal); *Hesse v. Hesse*, 778 N.W.2d 98, 105 (Minn. App. 2009) (noting appellate courts ignore prejudicial error when prejudice is de minimis); *see also Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (noting appellate courts will not reverse district court if it reached affirmable result for wrong reasons).

⁸ Rebecca frames her argument under the “law of the case” doctrine. We question whether the law-of-the-case doctrine applies in the technical sense to the procedure that occurred in this case. *See Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994) (noting “law of the case . . . ordinarily applies when an appellate court has ruled on a legal issue and has remanded the case to the lower court for further proceedings”). *But see Huntsman v. Huntsman*, No. A12-2147, 2013 WL 5777908, at *10 (Minn. App. Oct. 28, 2013) (applying “law of the case” in family law matter when we refused to revisit issue decided in earlier appeal (quotation omitted)), *rev. denied* (Minn. Dec. 17, 2013).

740, 744 (Minn. 1994); *see also* Minn. R. Civ. App. P. 140.01 (“No petition for rehearing shall be allowed in the Court of Appeals.”). In *Povarchuk I*, we rejected Valentin’s challenges to the December 2022 order. *See* 2023 WL 6381567, at *3-4. Valentin’s res judicata argument in the current appeal is simply an attempt to have this court decide the *same issue*—the validity of the December 2022 order—at a subsequent stage of the *same case*. *See Loo*, 520 N.W.2d at 744. Because we already adjudicated the merits of this issue in *Povarchuk I*, we will not revisit our decision in this appeal.⁹

In sum, the district court did not abuse its discretion when it determined that it had authority to enforce the December 2022 order and Valentin failed to comply with that order.

⁹ Valentin also argues the district court abused its discretion when it failed to conduct a best-interests analysis regarding the children’s activities. But neither Valentin nor Rebecca filed a motion to modify parenting time. Instead, the district court resolved Rebecca’s motion for contempt and sanctions for failing to comply with its December 2022 order. Valentin provides no authority that the district court must conduct a best-interests analysis for this type of motion. *See Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal authority). Nor did Valentin request that the district court make such findings. *See Thiele*, 425 N.W.2d at 582 (stating that appellate courts generally address only those questions previously presented to and considered by the district court). Further, we observe that the record amply shows that these activities are in the children’s best interests. As the district court acknowledged, neither Valentin nor Rebecca argued that participating in these camps and activities was not in the children’s best interests. At the November 2023 hearing, both parties spoke about how the OSRUI camp is beneficial for their children. And the primary dispute about the violin lessons relates to how to divide the cost of the lessons among the parties, not whether the lessons themselves are appropriate.

II.

Valentin next argues the district court abused its discretion because it imposed a criminal-contempt sanction in this civil-contempt dispute. We disagree that the district court imposed a criminal-contempt sanction.

Minnesota law recognizes both civil and criminal contempt. *See State v. Tatum*, 556 N.W.2d 541, 544 (Minn. 1996). A district court imposes a criminal-contempt sanction to “vindicate[e] the court’s authority by punishing the contemnor for past behavior.” *Id.* A district court imposes a civil-contempt sanction to “vindicat[e] the rights of a party by imposing a sanction that will be removed upon compliance with a court order that has been defied.” *Id.* As such, “[c]ivil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform.” *Mahady v. Mahady*, 448 N.W.2d 888, 890 (Minn. App. 1989).¹⁰

Here, the district court imposed a civil-contempt sanction. Rebecca moved for a contempt finding, and the district court granted her motion. Contrary to Valentin’s assertions, the district court applied the sanctions to encourage compliance with its existing order. The district court specifically provided that the sanctions would go toward the cost of the children’s summer camp—one of the issues prompting the contempt motion. Thus,

¹⁰ The Minnesota Supreme Court outlined eight minimum requirements, known as the *Hopp* factors, for district courts to consider when addressing whether to impose civil-contempt sanctions. *See Hopp v. Hopp*, 156 N.W.2d 212, 216-17 (Minn. 1968). Valentin observes that the district court may not have satisfied one of the factors but does not argue that this failure was a basis for reversal. Therefore, we do not reach this issue. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (providing that error on appeal is never presumed and it is appellant’s burden to prove error before there can be reversal).

the sanction was remedial rather than punitive because the district court intended to induce Valentin's compliance with the December 2022 order, not to punish Valentin for his past behavior. *See id.* ("Civil contempt proceedings are designed to induce future performance of a valid court order, not to punish for past failure to perform.").

Furthermore, the supreme court has classified similar contempt proceedings as civil. *See Hopp*, 156 N.W.2d at 216. In *Hopp*, the supreme court held that a contempt order in the child-support context was a civil proceeding, noting that a parent's failure to comply with a court order to pay child support is a "serious social problem" and district courts need tools to enforce those obligations. *Id.* The same reasoning applies with equal force to the civil-contempt order in this case. *See* Minn. Stat. § 518A.26, subd. 4 (2020) (defining "basic support" to include expenses related to a child's care); *cf. McNulty v. McNulty*, 495 N.W.2d 471, 473 (Minn. App. 1993) (affirming district court's decision that significant expenses for child's extracurricular activities can support upward deviation from presumptively appropriate guideline-support obligation), *rev. denied* (Minn. Apr. 12, 1993).

In sum, the district court did not abuse its discretion when it found Valentin in civil contempt.

III.

Finally, Valentin challenges the district court's decision to award Rebecca fees under Minn. Stat. § 518.14, subd. 1. He specifically contends that the district court abused its discretion because it imposed "a private fine."

Under Minn. Stat. § 518.14, subd. 1, a district court may, “in its discretion,” award “fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding.” Such fees, costs, and disbursements “may be awarded at any point in the proceeding.” Minn. Stat. § 518.14, subd. 1. The district court must specify what conduct justified the award of conduct-based fees, costs, or disbursements and explain whether that conduct occurred during the litigation process. *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001).

Valentin asserts that the district court abused its discretion when it imposed what he characterizes as “a private fine.” He contends that Minn. Stat. § 518.14, subd. 1, only authorizes attorney fees and does not authorize a district court to impose \$10,000 in fees. This argument is unpersuasive. As set forth above, the statute plainly allows the district court, in 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 (emphasis added). Here, the district court properly exercised its discretion when it determined that Valentin was unreasonably contributing “to the length

and expense of this proceeding” and imposed a fee accordingly. Thus, the district court did not abuse its discretion when it imposed this fee.¹¹

Affirmed.

¹¹ Valentin separately argues the district court abused its discretion when it relied on inadmissible hearsay statements. In particular, Valentin highlights the district court’s finding that the challenged activities are beneficial to the children’s wellbeing. But Valentin does not explain how that finding prejudiced him. *See In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (“We cannot determine prejudice where there is little indication that the court considered evidence from prior records, no showing that use of the material otherwise materially affected the result, and no showing of an offer of proof to contradict information that might have been used by the court.”). Further, our review of the record indicates that non-hearsay testimony from both Rebecca and Valentin supported the district court’s finding.