

*This opinion is nonprecedential except as provided by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
A24-0533**

In re the Marriage of:

Oliver Wilfred Cass, petitioner,
Respondent,

vs.

YeYing Cen,
Appellant.

**Filed April 7, 2025
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-FA-17-2558

Jane Binder, Binder Law Offices, P.A., Minneapolis, Minnesota (for respondent)

Kathryn A. Graves, Dylan Wallace, Henson & Efron, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant-wife challenges the district court's denial of her request for need-based attorney fees. We affirm.

FACTS

In 2010, appellant YeYing Cen (wife) married respondent Oliver Wilfred Cass (husband). In 2017, husband petitioned for dissolution. In her answer and counterpetition, wife requested “attorney fees and costs.”

The parties appeared before the district court for a trial on husband’s dissolution petition, and each was represented by counsel. On the second day of trial, the parties agreed to settle the matter, and wife’s counsel stated the terms of the settlement on the record. The settlement addressed property issues and spousal maintenance, but it did not address attorney fees. Wife voiced concerns regarding the terms of the settlement on the record, questioning whether it would provide adequate financial security. But wife agreed to the settlement on the record. She acknowledged that it would be “a final settlement” and that she would “not be able to change it.” She also acknowledged that she was “familiar with [her] marital estate and the issues that the [c]ourt would address as a result of th[e] trial if the settlement weren’t reached.”

Later, wife challenged the settlement in two informal letters to the district court. She also filed a motion requesting the “addition” of spousal maintenance. But she did not request attorney fees.

In August 2019, husband’s counsel submitted a proposed judgment and decree to the district court. The district court signed it—without addressing wife’s informal challenges or motion—and judgment was entered. The judgment and decree stated that each party would be responsible for their own attorney fees and that a party would be

responsible for any fees incurred by the other party in successfully seeking to enforce the judgment and decree.

Wife appealed, arguing that the district court denied her due process by failing to address her challenges to the validity of the settlement. *Cass v. Cen*, No. A19-1903, 2021 WL 317725, at *1 (Minn. App. Feb. 1, 2021). We reversed and remanded, holding that the district court failed to afford wife due process by entering the judgment and decree without first addressing her challenges. *Id.* at *4. We also held that the district court erred by entering the judgment and decree despite husband’s failure “to file a transcript of the oral stipulation as required by Minn. R. Gen. Prac. 307(b).” *Id.* We remanded “to allow wife an opportunity to be heard on her motion attacking the validity of the oral stipulation.” *Id.* at *5.

On remand, wife moved the district court to vacate the settlement. After a hearing, the district court denied wife’s motion. The district court directed husband’s counsel to prepare and submit a proposed judgment and decree that matched the parties’ agreement “as stated on the record.” Husband’s counsel submitted a proposed amended judgment and decree, which stated that each party would pay their own attorney fees. Wife objected, asserting that there was “no agreement on the record concerning attorney’s fees and costs.” But wife did not request attorney fees.

In February 2022, the district court entered an amended judgment and decree; it did not contain a provision regarding attorney fees and costs. Wife appealed a second time, challenging the denial of her motion to vacate the parties’ settlement. This court affirmed.

Cass v. Cen, No. A22-0538, 2023 WL 3939488, at *1 (Minn. App. June 12, 2023), *rev. denied* (Minn. Aug. 22, 2023), *cert. denied*, 144 S. Ct. 1105 (2024).

In November 2023, wife moved the district court—for the first time—to address the issue of attorney fees, arguing that it was an “omitted” issue that was “never agreed upon by the parties or decided by the [c]ourt in the prior proceedings.” In an accompanying affidavit, wife asserted that she had paid substantial attorney fees and that “[n]one of those fees were discussed as a part of [the] settlement.” In a responsive affidavit, husband stated that during the parties’ settlement negotiations, “at no time did [wife] raise the issue of [husband] contributing to her attorney’s fees, so no fees were awarded to either party.”

The district court denied wife’s attorney-fee motion and explained its decision as follows:

Minn. Stat. § 518.14 [(2022)] allows the [c]ourt to award a party attorney fees in an amount necessary to enable a party to carry on or contest the proceeding. Nothing in Minn. Stat. § 518.14 requires the court to determine whether parties are required to pay the fees of the other. Wife, in her [a]nswer, requested an award of need-based attorney fees. This is a claim made by [w]ife[,] not an asset or debt required to be divided. Wife did not make a claim for conduct-based attorney fees at trial. Both parties in a dissolution make claims. Not all claims are awarded. The parties in evaluating settlement, compromise what claims they pursue and are ultimately awarded in circumstances of agreement of the parties. Claims not resolved in the settlement must be reserved for future determination in order to be an open claim ultimately resolved by the [c]ourt. The 2022 [j]udgment and [d]ecree states[,] “On the afternoon of the second day of trial, the parties reached agreements on all remaining contested issues and read their agreements into the record.” Wife’s attorney fee claim was neither granted nor reserved. As such, [w]ife is solely responsible for her attorney fees and costs incurred in this matter.

(Citation omitted.)

Wife appeals the district court's denial of her request for need-based attorney fees.

DECISION

The provision of need-based attorney fees in a dissolution proceeding is governed by Minn. Stat. § 518.14, subd. 1 (2024), which provides:

[I]n a proceeding under this chapter or chapter 518A, the court *shall* award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding, provided it finds:

(1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;

(2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and

(3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

(Emphasis added).

Wife cites section 518.14, subdivision 1, and *Muschik v. Conner-Muschik* as support for reversal of the district court's refusal to award attorney fees. 920 N.W.2d 215 (Minn. App. 2018). Wife notes that in *Muschik*, this court acknowledged that a district court "must" award attorney fees if the requirements of section 518.14 are met. *Id.* at 225. However, in that case, the district court awarded need-based attorney fees following a dissolution trial. *Id.* at 219-20.

This case has a very different procedural posture: wife requested need-based attorney fees stemming from a dissolution proceeding that ended in a stipulated judgment and decree, but she did not request that attorney fees be included in the stipulation.

Moreover, wife's request for attorney fees was *first* presented to the district court four years after the initial entry of the judgment and decree, almost two years after entry of the amended judgment and decree, and months after this court's decision in the second appeal from the amended judgment and decree.

In sum, in *Muschik*, the district court's determination that need-based attorney fees were warranted was made in the context of a dissolution trial, and the timing of the request for attorney fees was not an issue. Thus, *Muschik* is not on point.

As to timeliness, our research does not reveal any rule of procedure, statute, or caselaw dictating a precise time limit on a request for attorney fees. But older caselaw indicates that such a request must be made in the proceeding in which the requested fees were incurred. *See Pekarek v. Wilking*, 380 N.W.2d 161, 165 (Minn. App. 1986) (rejecting wife's claim that she was entitled to attorney fees incurred on remand after first appeal, reasoning that wife "had ample opportunity to request attorney's fees incurred on remand. Most appropriately, that item should have been negotiated in the stipulation. It is now untimely."). And our research does not reveal any authority suggesting that a request for need-based attorney fees may be raised in the district court by motion for the first time long after the judgment and decree has become final.

The need for a timely request for attorney fees stemming from a dissolution proceeding is consistent with Minnesota Statute section 518.145, subdivision 1 (2024), which provides that "[a] decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal." Generally, because of a desire for finality, "[r]elief from a judgment and decree of divorce based upon a stipulation of the parties is

available only under Minn. Stat. § 518.145 [(1996)].” *Shirk v. Shirk*, 561 N.W.2d 519, 519, 522 (Minn. 1977). There are five enumerated grounds for reopening a judgment and decree, and a party must timely move to reopen. Minn. Stat. § 518.145, subd. 2 (2024).

The amended judgment and decree in this case was “final” when entered on February 24, 2022, subject to wife’s right to appeal. *See id.*, subd. 1. Wife appealed the February 2022 judgment and decree, but she did not raise her claim for attorney fees in that appeal.¹ Thus, wife’s only avenue for obtaining attorney fees in the underlying dissolution proceeding was to move to reopen the judgment and decree. *See id.*; *Shirk*, 561 N.W.2d at 519, 522. Because wife has not sought to reopen the judgment and decree—much less suggested a statutory basis to do so—she cannot pursue her claim for attorney fees at this late stage, and the district court did not err by denying her request.

Wife’s arguments do not persuade us otherwise. For example, wife argues that under *Pooley v. Pooley*, courts have the power to address omitted assets that fall outside the scope of the judgment and decree, without reopening the judgment and decree. 979 N.W.2d 867, 875-77 (Minn. 2022). The supreme court stated, “The importance of recognizing the court’s power to divide omitted assets cannot be overstated.” *Id.* at 877. In addition, the supreme court stated that its holding “is actually quite narrow” because it “applies only to marital property under Minn. Stat. § 518.58, and only to those assets which

¹ At oral argument to this court in this appeal, wife’s counsel indicated that wife raised the issue of her attorney fees during her initial appeal, in the context of her due-process challenge. But wife’s counsel acknowledged that wife did not request an award of attorney fees from the district court until November 2023.

were entirely omitted from a dissolution judgment.” *Id.* at 879 n.12. Because this case does not involve omitted assets, *Pooley* is inapplicable.

Wife also argues that under *Phillips v. LaPlante*, “a claim for need-based fees can be resolved as an independent issue.” 823 N.W.2d 903 (Minn. App. 2012). She asserts that “the entry of a ‘final’ order or decree resolving the merits of the parties’ underlying claims does not foreclose a district court from addressing a party’s independent claim for need-based fees.”

In *Phillips*, this court considered whether a district court’s resolution of a spousal-maintenance issue was final and appealable prior to the district court’s resolution of an outstanding request for need-based attorney fees. *Id.* at 904, 907. We held that the district court’s ruling on the spousal-maintenance issue was not final and appealable because the request for need-based attorney fees was a “separate claim” requiring resolution. *Id.*

In short, *Phillips* involved the appealability of an order that did not fully resolve a request for need-based attorney fees. It did not address whether a request for need-based attorney fees may be raised in the district court by motion for the first time long after the amended judgment and decree has become final. Thus, *Phillips* is inapplicable here.

Under these circumstances, the district court did not err by denying wife’s request for attorney fees.

Affirmed.