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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0156**

In re the Marriage of:
Jean-Marie Baudhuin, petitioner,
Appellant,

vs.

David J. Baudhuin,
Respondent.

**Filed March 11, 2008
Affirmed in part and remanded
Halbrooks, Judge**

Dakota County District Court
File No. F2-00-8274

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Considered and decided by Halbrooks, Presiding Judge; Hudson, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

In this second appeal arising out of marriage-dissolution proceedings, appellant contends that the district court erred by (1) failing to properly implement remand

instructions regarding her spousal maintenance, (2) denying her subsequent motion to modify maintenance, (3) discharging alleged child-support arrears, (4) failing to properly implement remand instructions concerning \$10,000 that is still owed her under the parties' dissolution judgment and decree, (5) refusing to order judgment for her in the amount of \$11,833.64 that is owed to her under the dissolution judgment, and (6) awarding respondent conduct-based attorney fees. We affirm in part and remand.

FACTS

Appellant Jean-Marie Baudhuin and respondent David J. Baudhuin were married in 1983 and have three children. The children—J.P.B., J.B., and J.M.B.—are now ages 21, 18, and 13, respectively. The district court dissolved the parties' marriage in a July 2001 judgment and decree, but it issued an amended judgment and decree on August 16, 2001, modifying certain factual findings and legal conclusions.

In the amended judgment, the district court awarded appellant and respondent joint physical and legal custody of all three of their then-minor children. It set respondent's monthly child-support obligation at \$656 and respondent's temporary spousal-maintenance obligation at \$2,000 per month. But the district court stated that appellant's spousal maintenance would increase to \$3,000 per month when she started law school and would remain at the higher level as long as she remained enrolled in law school. Maintenance was to be temporary, terminating no later than six years from the date of the judgment. Appellant challenged the August 2001 amended judgment on twelve grounds. We affirmed in part, reversed in part, and remanded in *Baudhuin v. Baudhuin* (*Baudhuin I*), No. C7-01-1564 (Minn. App. July 2, 2002). Relevant to this second

appeal, in *Baudhuin I* we directed the district court to ensure that appellant received payment of the \$10,000 that she was still owed under the August 2001 amended judgment, to reconsider its custody determination and then set a new parenting schedule, and to recalculate spousal maintenance and child support.

The parties subsequently engaged in protracted litigation regarding both new disputes and the implementation of parts of the *Baudhuin I* court's remand instructions, the factual details of which are discussed below. Due almost entirely to the parties' refusal to provide necessary information and their general uncooperativeness, the district court, whose patience and persistence in this matter has been admirable, was unable to resolve the last of the outstanding issues remanded by the *Baudhuin I* court until its order issued on November 20, 2006.

This appeal follows.

D E C I S I O N

I.

Appellant started law school on a part-time basis in the fall of 2001 and verified that she remained enrolled through the spring 2002 semester. It appears from the record that respondent paid appellant the increased maintenance amount of \$3,000 per month for this time period. During the summer after appellant's first year in law school, this court issued *Baudhuin v. Baudhuin (Baudhuin I)*, No. C7-01-1564, 2002 WL 1425355 (Minn. App. July 2, 2002). In the opinion, we affirmed the district court's determination that spousal maintenance should be temporary but vacated the original amount awarded. *Baudhuin I*, 2002 WL 1425355, at *10. On remand, we directed the district court to

recalculate the spousal-maintenance amount owed appellant after considering the expenses that she would incur by attending law school, without imputing any income to her. *Id.*, at *6-*8.

In its subsequent November 7, 2002 order, the district court ordered respondent to pay appellant monthly maintenance in the amount of \$2,500 and shortened the duration of the maintenance by approximately nine months. At an unverified later date, appellant dropped out of law school. More than three years later, in a February 10, 2006 motion, appellant sought modification of her spousal maintenance as set in the November 2002 order. The district court denied this motion in a February 24, 2006 order. Appellant now challenges both the district court's setting of maintenance in the November 2002 order as a violation of the *Baudhuin I* court's remand instructions and its subsequent refusal to modify her maintenance in the February 2006 order.

A. Timeliness of the appeal

In response to appellant's arguments, respondent claims that her appeal of both orders is untimely. Generally, Minn. R. Civ. App. P. 104.01 governs the time for a party to appeal a district court's judgment or order. This rule states that "[u]nless a different time is provided by statute, an appeal may be taken . . . from an appealable order within 60 days after service by any party of written notice of its filing." Minn. R. Civ. App. P. 104.01, subd. 1. Compliance with this rule is required for an appellate court to properly exercise jurisdiction. *Marzitelli v. City of Little Canada*, 582 N.W.2d 904, 907 (Minn. 1998). The party arguing that an appeal of an order is untimely has the burden of proving that written notice of the order's filing has been served by any party.

Matsch v. Prairie Island Indian Cmty., 559 N.W.2d 128, 129-30 (Minn. App. 1997). In the absence of such information, that party cannot establish that the appeal of a particular order was untimely. *Id.*

Respondent has made no showing that either party served written notice of filing of the November 2002 order, and we find no evidence in the record to support such a claim. To the contrary, respondent's brief states that "there is no evidence of when, if ever, notice of the filing of [the November 2002] order was served." Accordingly, respondent has failed to meet his burden to show that the time to appeal this order ever began to run.

Even assuming, *arguendo*, that notice of service of the filing of the November 2002 order is produced, the order was still not appealable until the district court resolved the last of the remaining remand issues in its November 20, 2006 order. The language of rule 104.01 requires that an order be an "appealable order" before the time to appeal begins to run. Minn. R. Civ. App. P. 103.03 defines various circumstances that render orders appealable.¹ The rule states, in relevant part:

An appeal may be taken to the Court of Appeals:

....

(e) from an order which, in effect, determines the action and prevents a judgment from which an appeal might be taken;

¹ We note that respondent cites Minn. R. Civ. P. 54.02 in support of his argument. Rule 54.02 describes how and when the entry of a partial judgment can be appealed. This rule is inapposite here because the November 7, 2002 document was not a judgment, but an order. Thus, Minn. R. Civ. P. 54.02 is not determinative of the issue of the timeliness of the order's appeal.

....

(h) from an order that grants or denies modification of custody, visitation, maintenance, or child support provisions in an existing judgment or decree[.]

Minn. R. Civ. App. P. 103.03.

There were numerous issues before the district court as a result of the *Baudhuin I* court's remand, including redetermination of custody, the necessary recalculation of child support based on the determined custody, recalculation of spousal maintenance, and enforcement of a \$10,000 money award owed to appellant. The November 2002 order addressed only the spousal-maintenance issue. The child-support determination and the dispute over the \$10,000 were not resolved until the district court issued its November 20, 2006 order. Therefore, because the November 2002 order addressing spousal maintenance did not "determine" the parties' "action," it was not an appealable order under Minn. R. Civ. App. P. 103.03(e). Furthermore, because the November 2002 order altering maintenance was not the grant or denial of a motion to modify maintenance pursuant to the relevant statutes, it also was not an appealable order under Minn. R. Civ. App. P. 103.03(h).² Thus, it was not until the November 20, 2006 order that the entirety

² Minn. R. Civ. App. P. 103.03(h) is a codification of the case of *Angelos v. Angelos*, 367 N.W.2d 518 (Minn. 1985). Minn. R. Civ. App. P. 103.03 2000 advisory comm. cmt. The *Angelos* case clarified that orders granting or denying motions to modify spousal maintenance brought under Minn. Stat. § 518.64 (2004) and the related statutes are appealable orders. *See Angelos*, 367 N.W.2d at 518-21 (discussing modification pursuant to the relevant statutes in effect at the time). Thus, the term "modification" as contained in rule 103.03(h) is a term of art referring specifically to orders addressing alterations of maintenance made pursuant to the relevant statutory framework. Because the maintenance alteration in the November 2002 order was pursuant to remand instructions,

of the parties' "action" was determined under rule 103.03(e), and the time for appeal began to run. As a result, the appeal of this order is timely.

Respondent similarly argues that the February 24, 2006 order is not properly before this court because it was not timely appealed.³ We disagree.

As already noted, rule 103.03(h) is a codification of the case of *Angelos v. Angelos*, 367 N.W.2d 518 (Minn. 1985). Minn. R. Civ. App. P. 103.03 2000 advisory comm. cmt. The rule was meant only to allow appeals "in accordance" with *Angelos* and was not meant to "expand [the] appealability of otherwise unappealable orders." *Id.* *Angelos* clarified that orders granting or denying motions to modify maintenance, custody, child support, and visitation are indeed appealable, but only if the order is final. *Angelos*, 367 N.W.2d at 520 (stating "*final* orders . . . denying as well as granting modifications of custody, visitation, maintenance, and support . . . are appealable as of right" (emphasis added)). Accordingly, so too is this finality requirement incorporated into rule 103.03(h). *See also City of Chaska v. Chaska Twp.*, 271 Minn. 139, 142, 135 N.W.2d 195, 197 (1965) (stating the word "final," when used to designate the effect of the district court's judgment or order, means that the entire matter is conclusively terminated so far as the court issuing the order is concerned); *Doering v. Doering*, 629

and not a modification motion brought under said statutory framework, the alteration is not immediately appealable under rule 103.03(h). *See* Minn. R. Civ. App. P. 103.03 2000 advisory comm. cmt. (stating the addition of subsection (h) was "not intended to expand appealability of otherwise unappealable orders").

³ Unlike with the November 2002 order, the record does contain evidence that respondent served appellant with notice of the filing of the February 24, 2006 order shortly thereafter. Thus, assuming the order is appealable, respondent has met his burden to demonstrate that the time for appeal began to run on this order.

N.W.2d 124 (Minn. App. 2001) (holding that a district court order denying a party's motion to reopen a dissolution judgment but reserving the party's child-support modification motion pending further hearings was not final and therefore not immediately appealable under 103.03), *review denied* (Minn. Sept. 11, 2001).

Here, appellant's motion to modify her maintenance also requested, among other things, that the district court enforce the award of a \$10,000 nonmarital gift still owed her under the parties' amended dissolution judgment and deny respondent's motion to alter the custody arrangement of the parties' children. The district court reserved ruling on both of these issues, and they were not resolved until the issuance of the November 20, 2006 order. In other words, the February 24, 2006 order was not yet final—so not yet appealable under rule 103.03—because it left other issues raised by appellant in her preceding motion unresolved. To require appellant to immediately appeal the denial of her spousal-maintenance-modification motion before these other outstanding issues were resolved would also contravene the general policy goal of preventing “piecemeal litigation.” *Am. Family Mut. Ins. Co. v. Peterson*, 380 N.W.2d 495, 497 (Minn. 1986). As a result, we conclude the February 24, 2006 order denying appellant's motion to modify her maintenance is also properly before us.

B. Propriety of the November 2002 and February 2006 orders

We therefore turn to the merits of the appeal. We review both a district court's implementation of remand instructions and grant or denial of a motion to modify maintenance for an abuse of discretion. *Janssen v. Best & Flanagan, LLP*, 704 N.W.2d

759, 763 (Minn. 2005) (remand instructions); *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997) (modification of maintenance).

In order to initially calculate maintenance (as well as child support) and to determine whether it should be modified, the district court must be provided with sufficient, timely financial information regarding each party's expenses and income. Despite the district court's repeated efforts to obtain this information from both parties, the record is replete with instances of each party's unjustifiable and steadfast refusal to provide the information necessary to resolve the issues of both maintenance and child support. The examples set forth below, taken from the numerous district court orders contained in the record, provide just a survey of the difficulties the district court has faced in attempting to settle these matters.

The parties' acrimonious behavior began within months of the August 2001 amended dissolution judgment. The district court noted in a January 2002 order that the parties "cannot agree on the time of day, let alone" resolve the remaining issues between them and that their ongoing "war" was having a detrimental effect on their children. In a June 2002 order, the district court discussed how the parties were "completely unable to manage their own lives" and were entirely "dependent on their attorneys and the [c]ourt system to direct everything that they do." In a June 2003 order, the district acknowledged that the *Baudhuin I* opinion had directed it to recalculate maintenance and child support, but stated that neither party had provided "sufficient evidence and documentation as to the current reasonable living expenses, financial situation and work and/or educational schedules . . . to make [either] determination." It went on to state that

both appellant and respondent had ignored multiple previous orders to produce such information and that their “insatiable thirst for battle” had “successfully clouded the issues so as to necessitate further proceedings to determine appropriate relief sought by both parties in their pending motions.” More than two years later, in a June 2005 order, the district court noted how the parties had still not exchanged the information necessary to resolve “the issues of maintenance and child support” and ordered that this information be exchanged within ten days so that a hearing could be scheduled to resolve these issues.

As evidenced in the district court’s February 24, 2006 order, the parties once again ignored this dictate and did not produce the necessary information. In this order, the district court stated that appellant had failed to verify that she was enrolled in law school in November 2002; as a result, the district court set appellant’s maintenance at \$2,500.⁴ As of February 2006, appellant had still not disclosed her “current educational status” to the district court. Further, despite repeated requests, appellant also had not disclosed her “income information . . . for over two (2) years.” The district court concluded by stating that both appellant and respondent “have by their actions, or lack thereof, made a final determination of child support” and maintenance “a nearly impossible task.”

Generally, a party has a duty to procure and produce appropriately requested and properly discoverable information needed to resolve a dispute before the district court.

⁴ The appendix to appellant’s brief does contain a document indicating that appellant was still enrolled in law school at the end of August 2002, but this same document was not found in the district court file. *See* Minn. R. Civ. App. P. 110.01 (stating the record on appeal is limited to the “papers filed in the [district] court, the exhibits, and the transcript of the proceedings”); *In re Estate of Riggle*, 654 N.W.2d 710, 717 (Minn. App. 2002) (stating that, generally, appellate courts strike documents in a party’s brief that are not part of the appellate record).

See generally Minn. R. Civ. P. 26-37 (discussing the rules of discovery in civil matters, including sanctions for not producing properly discoverable information). Thus, “[o]n appeal, a party cannot complain about a district court’s failure to rule in [his or] her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.” *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003); *see also Tuthill v. Tuthill*, 399 N.W.2d 230, 232 (Minn. App. 1987) (reciting this rule in the context of spousal maintenance); *Taflin v. Taflin*, 366 N.W.2d 315, 319 (Minn. App. 1985) (reciting this rule in a child-support modification context).

If there ever were an example why such a principle is enshrined in our jurisprudence, this case is it. Appellant has effectively prevented the district court from resolving the issue of maintenance in her favor and from properly applying the *Baudhuin I* court’s remand instructions on this and other issues by her failure to produce properly discoverable information regarding her financial circumstances and law school status.⁵ Accordingly, she cannot now complain that the district court erred by setting maintenance at \$2,500 in the November 2002 order and by refusing to modify this amount in the February 2006 order. Nevertheless, we note that in its November 20, 2006 order, the district court granted appellant’s motion to extend the duration of her maintenance “pending completion of discovery [and] the resolution of any appellate

⁵ The same thing could be said about respondent, but he is not challenging the district court’s maintenance and child-support determinations on appeal.

issues.” Therefore, while concluding that appellant’s arguments regarding the propriety of the November 2002 order and the February 2006 order warrant her no relief, we remand this matter to the district court so that it can resolve any issues regarding maintenance that remain pending, if any.

Appellant also takes issue with the fact that the November 2002 order shortened the duration of her temporary maintenance by approximately nine months. But in its November 20, 2006 order, the district court extended the duration of the maintenance on an open-ended basis. Considering that the August 2001 amended judgment originally stated that appellant’s temporary maintenance was to end in August 2007 and it is now well into 2008, appellant’s argument that the district court erred in shortening the duration of her temporary maintenance in the November 2002 order is moot.

II.

Without outlining her claim with specificity, appellant contends that the district court erred in forgiving all of respondent’s purported child-support arrears. In its factual findings in the February 2006 order, the district court concluded that the parties’ refusal to provide the necessary information made determining appellant’s child support a “nearly impossible task.” The district court then stated that the appropriate response to this fact “is to forgive all ‘claimed’ arrears owed by both [parties] and set child support for [J.B.] and [J.M.B.] commencing March 1, 2006. Said amount of child support shall be determined by the court at [a future hearing].” In the legal-conclusions section of the order, the district court states that “[c]hild support for the minor child [J.M.B.] is hereby reserved” pending a further hearing. In the November 20, 2006 order, the district court,

having finally procured enough information to set child support, set respondent's monthly obligation at \$843.88 for June 2003 to June 2004 and \$871.88 to begin in July 2004. *See Eisenschenk*, 668 N.W.2d at 243. On the record before us, the district court has acted well within its discretion. We therefore affirm the district court on this issue.

III.

The district court determined in the amended dissolution judgment that appellant had been given a \$10,000 nonmarital gift by respondent's father during the marriage. The *Baudhuin I* court concluded that the district court failed to take this nonmarital asset into account when dividing the parties' property in the amended judgment and directed it to "provide a mechanism for the payment [to appellant from respondent] of this asset." *Baudhuin I*, 2002 WL 1425355, at *8. On remand, the district court ordered respondent to "transfer \$10,000 to [appellant] to satisfy the \$10,000 nonmarital gift." Appellant's fourth claim is that this language failed to properly implement the *Baudhuin I* court's remand instructions. We review a district court's implementation of remand instructions for an abuse of discretion. *Janssen*, 704 N.W.2d at 763.

Ordering respondent to "transfer" \$10,000 to appellant is undeniably a "mechanism" for appellant to receive payment of this money judgment. Thus, the district court's implementation of this remand instruction is consistent with the instruction and was not an abuse of discretion.

Appellant also claims that the district court should have calculated and added interest to the \$10,000 because the payment is overdue. Minn. Stat. § 549.09, subd. 1(a) (2006), states that interest "shall" accrue on an unpaid "judgment or award" from the date

the judgment or award is entered until it is paid. The use of the term “shall” indicates this requirement is mandated by the statute. Minn. Stat. § 645.44, subd. 16 (2006). In *Riley v. Riley*, this court found “no reason to distinguish an award of money in a dissolution action from judgments for the recovery of money in other types of cases.” 385 N.W.2d 883, 888 (Minn. App. 1986). Accordingly, we held that money awarded pursuant to a dissolution judgment is “included in the postjudgment interest provision” of section 549.09. *Id.*

Respondent argues that there was never a judgment or award of the \$10,000 until the November 20, 2006 order specifically requiring him to “transfer” this money to appellant, and thus he owes no interest before this date. We disagree. The district court clearly stated in the August 2001 amended dissolution judgment that appellant is “hereby awarded . . . [the] \$10,000 non-marital . . . gift from” respondent’s father. So while we conclude that the district court properly implemented the *Baudhuin I* court’s remand instructions regarding this \$10,000 judgment, because respondent has failed to pay it, we remand to allow the district court to calculate and add interest to this amount under section 549.09.

IV.

The district court found in the August 2001 amended judgment that respondent had dissipated marital assets in violation of an earlier, temporary order prohibiting such conduct. One of these assets was a retirement IRA worth \$38,667.27. To rectify this improper conduct, the district court ordered respondent to pay appellant one-half of the IRA’s value in three separate installment payments of \$2,500, \$5,000, and \$11,833.64.

The last installment payment of \$11,833.64 was to be made by February 16, 2003. Six days before this date, respondent moved to suspend this final installment payment, pending determination of his alleged “overpayment of child support.” In a June 2003 order, the district court expressly reserved ruling on this motion until the appropriate custody of the parties’ three children was determined.

Presumably due to reasons discussed previously in this opinion, no action was taken on this matter for almost three years. Then in early 2006, appellant moved to enforce this payment by seeking a judgment against respondent for the entire amount. In its February 24, 2006 and November 20, 2006 orders, the district court did not specifically address this motion and therefore effectively denied it, due to language in each order stating that any claims not specifically addressed therein were denied. Appellant contends on appeal that the district court erred in refusing to grant her a judgment for this unsatisfied \$11,833.64 payment.

Appellant asks us to remedy this situation by ordering judgment for the entire amount. But she already has a judgment for this money award—the August 2001 amended dissolution judgment. The district court, with its substantially superior knowledge of the parties’ long running dispute, should first have an opportunity to address this matter. Given the contentiousness and complexity of this litigation, there may be some reason that the district court did not immediately address appellant’s motion. Due to the inability to properly review the district court’s decision not to address this motion in the February 2006 and November 2006 orders, we remand to provide it an opportunity to do so. *See Stich v. Stich*, 435 N.W.2d 52, 53 (Minn. 1989) (stating that

“[e]ffective appellate review . . . is possible only when the [district] court has issued sufficiently detailed findings of fact” to support its decision); *Moylan v. Moylan*, 384 N.W.2d 859, 863 (Minn. 1986) (“Findings are necessary to support a judgment and to aid the appellate court by providing a clear understanding of the basis and grounds for the decision. If a [district] court gives no findings . . . , the court’s judgment will be without foundation.” (citation omitted)).

Assuming, as it appears, that respondent has yet to satisfy this obligation,⁶ the district court should create a mechanism to ensure that appellant receives payment of this amount. If the payment is overdue, the district court should calculate the interest to be added to this payment under Minn. Stat. § 549.09.

V.

Appellant’s fifth and final claim is that the district court abused its discretion by ordering her to pay conduct-based attorney fees to respondent. In its February 2006 order, the district court sua sponte ordered that conduct-based attorney fees be paid to each party’s respective counsel, stating in the findings section of the order that both appellant and respondent

have acted in bad faith during this proceeding and have unnecessarily prolonged this action. [Appellant] failed to provide complete discovery responses to [r]espondent even refusing to provide basis [sic] income documentation, including tax returns. In January of 2006, the court informed counsel for the parties, in writing, that both parties needed to respond to discovery within ten (10) days or consequences would occur. [Appellant] still did not provide the requested

⁶ Respondent admitted in a February 2, 2006 affidavit that he was still obligated to satisfy this payment.

information. The court finds that [appellant] should be responsible for a portion of respondent's attorney fees. Respondent failed to comply with the court's order regarding discovery and should be responsible for payment of petitioner's attorney's fees.

The district court then stated:

Attorney's Fees: [Appellant] shall pay to respondent's attorney as and for attorney's fees the sum of \$10,000 Likewise, respondent shall pay to [appellant's] attorney as and for attorney's fees the sum of \$10,000

Pursuant to Minn. Stat. § 518.001-.729 (2004), a district court may, "in its discretion," award attorney "fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1 (2004). An award of conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1, "rests almost entirely within the discretion of the [district] court and will not be disturbed absent a clear abuse of discretion." *Crosby v. Crosby*, 587 N.W.2d 292, 298 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Feb. 18, 1999). In awarding attorney fees, the district court must indicate whether the award of the fees is based on the conduct or need of a party and address the statutory factors for the kind of award involved. *Geske v. Marcolina*, 624 N.W.2d 813, 816 (Minn. App. 2001). "[I]f an award of conduct-based fees is proper, it may be made regardless of the recipient's need or the payor's ability to pay." *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007).

Appellant attacks the award of attorney fees as a violation of Minn. R. Gen. Pract. 119. Generally, this rule requires a motion for attorney fees of at least \$1,000 to be

accompanied by an attorney's affidavit describing each item of work performed, the time spent on each item of work, and the attorney's hourly rate. Minn. R. Gen. Pract. 119. We initially note that it is questionable whether rule 119 applies at all to this situation because the district court awarded attorney fees sua sponte. *See* Minn. R. Gen. Pract. 119 (stating that the rule's requirements apply when “*an attorney seeks* the award . . . of attorneys' fees” (emphasis added)). But even assuming that it does, appellant's argument is without merit.

Rule 119 was not meant to be a substantive restriction on a district court's discretionary authority to order attorney fees. Minn. R. Gen. Pract. 119 1997 advisory comm. cmt. It was only meant to streamline the process of seeking attorney fees by ensuring that attorneys provide enough evidence to support a fee request to allow a district court to properly exercise its discretion in ruling on the request. *See id.*

Based on these advisory committee comments to rule 119, the supreme court has held, in the context of need-based attorney fees, that when “the [district] court is familiar with the history of the case and has access to the parties' financial information, it may waive the requirements of Rule 119.” *Gully v. Gully*, 599 N.W.2d 814, 826 (Minn. 1999). The district court here is very familiar with the parties' case. The same district court judge who handled the parties' marriage dissolution has presided over the dispute since 2002. Although the holding in *Gully* was based on need- rather than conduct-based fees, the reasoning was premised on the committee comments to rule 119, not the type of fees involved. Admittedly, the district court here was not fully informed of each parties' financial circumstances, due to their uncooperativeness. But conduct-based attorney fees

may be awarded regardless of such circumstances. *Brodsky*, 733 N.W.2d at 476. Accordingly, we conclude that a district court familiar with the history of the case can also waive rule 119 in the context of conduct-based attorney fees. Thus, appellant's argument that noncompliance with rule 119 here invalidates the award of attorney fees warrants her no relief.

Appellant also claims that her conduct does not justify an award of conduct-based attorney fees because respondent never moved to compel discovery. Given the above discussion of appellant's conduct, this argument is without merit. The district court was well within its discretion in ordering that attorney fees be paid to respondent based on appellant's conduct.

In summation, we affirm the district court's setting of maintenance in the November 2002 order and its subsequent refusal to modify the amount, but remand to allow the district court to resolve any still-pending issues regarding maintenance that were not resolved in its November 2006 order. We also affirm the district court on its denial of the parties' respective claims concerning child-support arrearages. We conclude that the district court properly implemented our remand instructions regarding the payment of the \$10,000 but remand for calculation of interest owed appellant on this sum under Minn. Stat. § 549.09. We also remand the apparently unsatisfied \$11,833.64 payment to allow the district court to address appellant's motion to enforce its payment. We affirm the district court's award of conduct-based attorney fees. On remand, the district court shall have discretion to reopen the record if it deems it necessary to do so.

Affirmed in part and remanded.