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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0481**

In re the Matter of:
Robert James Smith, petitioner,
Respondent,

vs.

Angela Renae Opstad,
Appellant.

**Filed April 7, 2014
Affirmed
Randall, Judge ***

Hennepin County District Court
File No. 27-FA-11-8511

Andrew M. Silverstein, Andrew M. Silverstein Law Office, Minneapolis, Minnesota (for respondent)

Michelle L. MacDonald, Athena V. Hollins, Jacob J. Brodin, MacDonald Law Firm, LLC, West. St. Paul, Minnesota (for appellant)

Considered and decided by Hudson, Presiding Judge; Peterson, Judge; and Randall, Judge.

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

UNPUBLISHED OPINION

RANDALL, Judge

Appellant-mother challenges the district court's denial of need-based and conduct-based attorney fees in connection with the custody and child-support proceeding initiated by respondent-father. We affirm.

We note at the outset that appellant devotes part of her argument to the importance of pretrial custody studies and Social Early Neutral Evaluation (SENE). The court does not disagree with the general principle that pretrial discussions are valuable, but having said that, the importance of SENE is not before us. This court's order dated December 13, 2013, confines this appeal to the narrow issue of appellant's request for need-based and conduct-based attorney fees. We also note that respondent, whose motion for attorney fees on appeal was denied in our December 13, 2013 order, attempted to raise this request again at oral argument. Again, this issue is not before us. We confine our analysis to the propriety of the district court's denial of appellant's motion for attorney fees.

FACTS

Appellant and respondent are the mother and father of a minor child born in late 2007. The parties executed a recognition of parentage the day after the child's birth and lived together as a family until late 2011. Respondent filed a custody, parenting time, and child support petition in November 2011, shortly after the parties separated. On June 19, 2012, the district court awarded the parties joint legal and physical custody of the

minor child and, among other rulings, denied appellant's request for \$13,576 in attorney fees. This appeal follows.

D E C I S I O N

We review for abuse of discretion a district court's denial of a motion for attorney fees under Minn. Stat. § 518.14, subd. 1 (2012). *See Gully v Gully*, 599 N.W.2d 814, 825 (Minn. 1999) (need-based fees); *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007) (conduct-based fees).

I.

In a proceeding under Minnesota Statutes chapter 518, a district court "shall" award need-based attorney fees if the fees are needed for a party's good-faith assertion of rights, the payor can pay the fees, and the recipient cannot. Minn. Stat. § 518.14, subd. 1. The district court denied appellant's motion for need-based attorney fees, ruling that appellant did not establish that the litigation was a good-faith assertion of her rights. Appellant focuses most of her argument on the disparity in income between the parties rather than the good-faith requirement. But financial need is not the only factor, and it was not the basis of the district court's decision.

With respect to the litigation, appellant asserts that she was merely responding to respondent's petition, which she claims he need not have filed because he enjoyed reasonable parenting time without court intervention. The district court rejected this argument, finding that appellant unilaterally terminated respondent's Tuesday evening parenting time and repeatedly interfered with respondent's attempts to contact the child. The district court specifically found that appellant lacked credibility when she testified

that she made all reasonable efforts to accommodate respondent's time with the child in person and electronically. The district court's credibility determinations are explained in the judgment and have an adequate basis in the record. We defer to the district court's determination that appellant's assertions on this subject are not credible. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Appellant also argues that to the extent that she limited respondent's parenting time before a custody order was in place, she was justified in doing so because, as the parties were not married when the child was born, she had sole custody by operation of Minn. Stat. § 257.541, subd. 1 (2012). The district court found that the parties are excellent candidates for equal parenting time and that appellant's efforts to limit respondent's parenting role and time could not have been made in good faith. The evidence in the record supports these findings.

The district court also found that appellant's settlement proposals were progressively more limited, included "semi-ultimatums," and that her negotiation strategy contributed to the length and expense of the action. Appellant maintains that these findings are erroneous. But "findings of fact based on conflicting evidence will not be disturbed on appeal unless manifestly and palpably contrary to the evidence as a whole." *Grant v. Malkerson Sales, Inc.*, 259 Minn. 419, 425, 108 N.W.2d 347, 351 (1961). The evidence as a whole supports the district court's findings.

The district court properly exercised its discretion. We affirm the denial of appellant's motion for need-based attorney fees.

II.

The district court has the discretion to award conduct-based attorney fees against a party who unreasonably contributes to the length or expense of a proceeding. Minn. Stat. § 518.14, subd. 1. The party moving for conduct-based fees has the burden to establish that the adverse party's conduct during the litigation process justifies an award. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001).

Appellant's argument in support of her request for conduct-based fees is that respondent unreasonably contributed to the length or expense of the proceeding by refusing to negotiate a settlement in good faith. The district court found that "almost each and every proposal made by [appellant] to [respondent] to settle this matter included semi-ultimatums such as that if [respondent] does not give [appellant] the property/cash/support/payment of debt she expects, [appellant] would not be willing to agree to [respondent's] parenting of the child." The district court specifically found that respondent's "failure" to respond to appellant's increasingly limited offers was "entirely understandable." The district court ultimately determined that appellant's conduct, not respondent's, appeared to contribute to the length and expense of the proceedings.

In considering a request for conduct-based attorney fees, a district court abuses its discretion if it "acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation and citation omitted). The district court committed no such errors. The district court determined that appellant failed to meet her burden of establishing that respondent's conduct justifies an award of conduct-based fees.

The district court properly exercised its discretion. We affirm the denial of appellant's motion for conduct-based attorney fees.

Affirmed.