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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1851**

In re the Marriage of:  
Horace D. Allen, petitioner,  
Appellant,

vs.

Nikki D. Thompson, f/k/a Nikki D. Allen,  
Respondent.

**Filed August 5, 2008  
Affirmed  
Schellhas, Judge**

Scott County District Court  
File No. 70-FA-02-22460

Horace D. Allen, 2897 North Druid Hills Road, #163, Atlanta, GA 30329 (pro se appellant)

Nikki D. Thompson, 3427 Vincent Avenue North, Minneapolis, MN 55412 (pro se respondent)

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

**UNPUBLISHED OPINION**

**SCHELLHAS, Judge**

Appellant challenges the district court's denial of his motion to have his name added to his minor child's school billing account; admission of certain testimony; and

order that the parties mediate future disputes. Appellant also alleges that the district court was hostile towards him and prevented him from communicating with counsel. We affirm.

## **FACTS**

Appellant Horace D. Allen (father) and respondent Nikki D. Thompson (mother) were divorced on November 21, 2003. The parties share joint legal custody of their minor child who is autistic and requires special care and schooling.

The parties have an extensive history of litigation following their divorce. In May 2007, father moved the district court for support of parental rights. Father primarily argued that his parental rights under Minn. Stat. § 518.17, subd. 3(b) (2006), were being impaired by the minor child's school, which would not grant him access to the billing records for his child. In July 2007, father amended his motion and sought an order from the district court (1) requiring mother to provide father proof of the actual amount charged to mother for child-care costs and expenses and how much she paid; (2) requiring mother to provide father proof of any credits or third-party payments she received relating to child-care costs; (3) requiring mother to sign a form giving father access to all billing records and detailed account information from the minor child's school and adding father to the school account; (4) granting father a credit toward child-care costs, if eligible; and (5) denying mother's countermotion.

When father brought his motion before the district court, he believed mother was receiving third-party payments or reimbursements for the minor child's care. Father believed that mother was receiving financial assistance that would entitle him to a credit

against his child-care obligation and a reduction in an arrearages judgment entered against him. Father sought equal access to historical billing information from the minor child's school so he could determine if he had been overpaying.

At the motion hearing, the district court took sworn testimony from mother regarding payments for the minor child's schooling. Mother testified that she paid for 100% of the minor child's schooling and child care and that she did not receive third-party reimbursement. The parties agreed at the hearing that mother had provided father with a copy of a statement from the minor child's school reflecting that no third-party payments had been received by the school. The district court denied father's motion. This appeal follows.

## **D E C I S I O N**

### **I.**

Father argues that the district court's denial of his motion for support of parental rights deprives him of his parental rights under Minn. Stat. § 518.17, subd. 3(b) (2006).

“Application of a statute to the undisputed facts of a case involves a question of law, and the district court's decision is not binding on this court.” *Branch v. Branch*, 632 N.W.2d 261, 263 (Minn. App. 2001). Minnesota Statutes, section 518.17, subdivision 3(b), reads:

The court shall grant the following rights to each of the parties, unless specific findings are made under section 518.68, subdivision 1. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to

the minor children. Each party shall keep the other party informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent-teacher conferences. The school is not required to hold a separate conference for each party. In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment. Each party has the right to reasonable access and telephone contact with the minor children. The court may waive any of the rights under this section if it finds it is necessary to protect the welfare of a party or child.

Father is entitled to access to and copies of the records the school has regarding his minor child, including any relevant billing records. Minn. Stat. § 518.17, subd. 3(b). We must decide what mechanism should be available to father to obtain the records and whether father's right to access to and copies of the records includes being added to the minor child's school billing account.

The judgment and decree in this case provides father with a vehicle by which to gain access to the records he seeks. Appendix A to the judgment and decree states, in relevant part:

V. PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17, SUBDIVISION 3 UNLESS OTHERWISE PROVIDED BY THE COURT:

- A. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor child. *Presentation of a copy of this*

*order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.*

(Emphasis added.) The record before us does not reveal whether father ever presented a copy of the judgment and decree to the minor child's school and was nevertheless denied access. The record before us simply does not reveal whether father attempted to utilize the legal access mechanism available to him under the law.

Father bears the burden of showing that the district court erred when it denied his motion to require mother to add his name to the minor child's school account and, if so, that the error prejudiced him.

It is well to bear in mind that on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it. And we do not reverse unless there is error causing harm to the appealing party. In other words, error without prejudice is not ground for reversal.

*Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 79 (1975) (emphasis omitted) (quotation omitted); *Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (applying *Midway* in a family-law appeal), *review denied* (Minn. Oct. 24, 2001).

The district court did not deny father the historical information he sought; he received at least some historical information from his child's school through the document mother provided to him showing the amounts mother paid to the school. Although it was not offered or admitted into evidence, and thus is not part of the court

record, the testimony establishes that the document does not reflect any third-party payments. Additionally, father's counsel spoke with an official from the minor child's school and was informed that the school's billing system tracked third-party payments separately from parent payments. The school told father's counsel that the billing records did not show any third-party payments on the minor child's account.

The district court did deny father's request to have his name added to the minor child's school account, but father has not presented any authority to this court to demonstrate why this ruling constitutes error or that he is entitled, under the statute, to have his name added to the school account.

“When interpreting a statute, we first look to see whether the statute's language, on its face, is clear or ambiguous. A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” *Am. Family Ins. Group v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted). In construing and interpreting statutes, “[t]he object . . . is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2006). When the language of a statute is plain and unambiguous, the plain language must be followed. *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 210 (Minn. 2001). Under the plain language of the statute, father is entitled to access to and copies of his minor child's school records. The statutory language does not entitle father to an order requiring mother to add his name to the minor child's school billing account.

Father next argues that the district court based its ruling on inaccurate data. During the hearing, the district court asked father's counsel about the amount of father's

child-care obligation. Father's counsel informed the district court that father's obligation was fixed at \$268 per month. Father argues that the district court erred in relying on this statement, because he is actually obligated to reimburse mother for 40% of out-of-pocket child-care expenses incurred from licensed child-care providers.

The judgment and decree set father's child-care obligation at 40% reimbursement, but was modified in January 2005 by an order of a child support magistrate (CSM). The CSM found "[b]oth parties now agree that the childcare contribution should be reduced to a constant monthly amount." The CSM set father's monthly child-care contribution at \$268. No appeal was taken from this order. No subsequent modifications have been made. Father's child-care contribution obligation remains at \$268. The district court did not base its ruling on inaccurate data.

Father also argues that the district court erred when it implied that he could obtain the minor child's school records directly from the school. This argument apparently stems from the court's inquiry of father's counsel, when it asked, "Why can't he just get it directly? If they have joint legal [custody], why isn't he able to get it directly?" In response, father's counsel explained that father was unable to access the records because his name was not on the minor child's account at the school. Based upon Minn. Stat. § 518.17, subd. 3(b), the court's question was legally sound, not error. Unfortunately, as above noted, the record before us does not reveal whether father presented the school with a copy of the judgment and decree.

Finally, father argues that the district court improperly focused on the number of times the parties had been in court rather than the merits of the issues presented. Father's

argument is unsupported by the record, which demonstrates that although the district court informed father's counsel that the parties had been before the court on numerous, previous occasions, the court based its ruling on the whole of the proceedings.

## II.

Father argues that the district court facilitated a hostile courtroom environment, using exploitative and abusive tactics to intimidate his attorney. Father argues that this is demonstrated in the transcript by his attorney calling him by the wrong name.<sup>1</sup>

“There is the presumption that a judge has discharged his or her judicial duties properly.” *State v. Mems*, 708 N.W.2d 526, 533 (Minn. 2006). There is nothing in the record which would overcome this presumption. The transcript of the hearing does not reflect that the court facilitated a hostile courtroom environment, or used exploitative or abusive tactics or language during the hearing.

## III.

Father argues that the district court improperly prevented him from communicating with his counsel.

Parties have no “statutory or constitutional right to counsel in dissolution proceedings.” *State ex rel. Ondracek v. Blohm*, 363 N.W.2d 113, 115 (Minn. App. 1985). In this case, the transcript shows that the court did not prevent father from communicating with his counsel, but rather, it attempted to maintain courtroom decorum and run an efficient hearing. The transcript shows at least one incident in which father

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<sup>1</sup> Father's counsel referred to father as “Mr. Thompson,” using his ex-wife's surname, three times before correcting herself.

interrupted his counsel while she was making her argument. The transcript also shows that the court found father's behavior during his counsel's remarks to be distracting, and said to father, "Sir, you have to hold still. All you are doing is distracting me."

The judge's role is to maintain decorum in the courtroom. Minn. R. Gen. Pract. 2.02(e) (stating that the judge shall be responsible for order and decorum in the court); *Minneapolis Star and Tribune Co. v. Kammeyer*, 341 N.W.2d 550, 559 (Minn. 1983) (stating "a trial court must have control of its courtroom."). The record in this case does not demonstrate that the district court was doing anything other than trying to maintain control of its courtroom.

#### IV.

Father argues that the district court abused its discretion when it took testimony from mother about the contents of the records he sought in his motion.

"Whether to receive evidence is discretionary with the district court." *J.W. ex rel. D.W. v. C.M.*, 627 N.W.2d 687, 697 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Evidentiary rulings are within the district court's discretion and reviewed for an abuse of that discretion. *Braith v. Fischer*, 632 N.W.2d 716, 721 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001).

As part of his motion, father sought historical data of the actual amounts charged to and paid by mother for the minor child's care, as well as documentation of any third-party contributions to those expenses. Mother provided father with a copy of a statement from the school providing father with this information. Father's counsel stated that she was unable to verify the printed information with the school, but that the school had

informed her that the computer records did not show any third-party payments. At this point, the court placed mother under oath. This exchange followed:

THE COURT: With regard to your child's schooling, . . . are you paying that personally yourself?

[MOTHER]: I pay 100 percent of the cost for his daycare.

THE COURT: Are you being reimbursed by anybody else for that?

[MOTHER]: I am not.

THE COURT: Okay. There's your answer.

Father's counsel then informed the court that father had a problem with mother's testimony because of deep-seated trust issues between the parties. The court responded:

And I tell you what. She is under oath. She swore it to me. She has given you a document that shows that she has paid it. So, that is all I am going to require. Just because he does not trust her doesn't mean he gets to nose in further than that. She has sworn to it. She is giving you a document that supports that. That's what you need.

Father argued to the district court, and now argues on appeal, that mother lacked sufficient credibility to testify because, according to father, she had previously committed a felony by illegally obtaining and distributing father's credit report. Other than father's statement, no evidence of a criminal conviction was submitted to the district court, and none is in the record before this court.

Judging the credibility of witnesses and the weight given to their testimony rests within the province of the finder of fact. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The district court determined that mother gave credible testimony and found that the testimony was corroborated by the documents from the minor child's school. While the record does not reflect that the court provided father an opportunity to cross-examine

mother, father does not complain about that. The district court's determination of credibility and weight given to mother's testimony were not an abuse of the court's discretion. Nor did the district court abuse its discretion in eliciting mother's testimony at the hearing.

Father argues that when the district court took mother's testimony about the minor child's school billing records, rather than granting father access to them by adding his name to the account, he was deprived of his parental rights under Minn. Stat. § 518.17, subd. 3(b). As previously discussed, the statute does not entitle father to have his name added to the minor child's school billing account. Father was not deprived of his rights.

#### V.

Father argues that the district court erred when it referred the parties to mediation to handle future disagreements. Because the district court subsequently vacated the order, the issue is now moot.

**Affirmed.**