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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0644**

Sarisse R. Creighton, petitioner,
Appellant,

vs.

Anthony Phillip Carlisle,
Respondent.

**Filed April 21, 2009
Affirmed in part and reversed in part
Shumaker, Judge**

Hennepin County District Court
File No. 27-FA-06-6850

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

Appellant-mother challenges the district court's findings that she interfered with respondent-father's parenting time and that her conduct had a negative impact on the parties' child. She also challenges the court's denial of her motion for conduct-based attorney fees and the award of such fees to respondent. We affirm in part and reverse in part.

FACTS

The parties to this appeal, appellant Sarisse R. Creighton and respondent Anthony Phillip Carlisle, who never married, are the adoptive parents of C.C., a special needs child born in 2001. The parties lived together for a time but separated in May 2006. Appellant then brought this proceeding to resolve custody and parenting-time disputes.

One of the hearings in the case occurred on December 19, 2007, before a referee of the family court division. In his recommended order of December 21, 2007—that the district court adopted—the referee noted that respondent “has not seen [C.C.] since Labor Day Weekend of this year, except perhaps one other time. This is partially on account of the continued extensive conflict between the parents.”

The referee also found that both parties had requested awards of bad-faith attorney fees and that “[b]ased upon the entire record before the Court, [appellant] has thwarted, or at least impeded, [respondent's] parenting time during the course of the litigation. Her behavior has been erratic and has had a negative impact on [C.C.]” The court then

awarded to respondent \$999 in attorney fees, but stayed the award upon the condition that appellant comply with respondent's parenting time.

Appellant moved to amend the findings in the December 21 order so as to delete the findings that appellant had interfered with respondent's parenting time, which had a negative impact on C.C., and that respondent was entitled to an award of attorney fees. The court denied the motion, and this appeal followed.

DECISION

Appellant raises two clusters of issues on appeal. The first relates to the district court's findings that appellant interfered with respondent's parenting time and that her conduct had a negative impact on C.C. Appellant contends that those issues were never raised in the district court and, in any event, the court's findings are not supported by the evidence. The second set of issues relates to the court's award of conduct-based attorney fees to respondent and its denial of appellant's motion for a similar award of attorney fees.

Challenged Findings

Appellant first contends that the issue of her conduct and its alleged impact on C.C. was never raised in the district court. Respondent's affidavit of December 14, 2007, focuses almost entirely on appellant's conduct. It is clear that the issue was before the district court, and it is appropriate that we review it on appeal.

Appellant next argues that the court abused its discretion by making clearly erroneous findings. We will not set aside the district court's findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *In re Estate of Rock*, 612 N.W.2d 891, 894

(Minn. App. 2000). A finding is clearly erroneous if, after considering the record in the light most favorable to the findings and deferring to the fact-finder's credibility determinations, we are "left with the definite and firm conviction that a mistake has been made." *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000) (quotation omitted).

The court found that appellant "thwarted, or at least impeded, [respondent's] parenting time during the course of the litigation." In its order denying appellant's motion to amend that finding, the court emphasized that it based the finding of appellant's interference with respondent's parenting time "*upon the entire record* before the Court." Reviewing the "entire record,"—which includes, among other things, emails and records of conversations between the parties—and doing so in the light most favorable to the findings, we conclude that the findings are not clearly erroneous. The court was entitled to make credibility determinations on this issue. If the court accepted as true most or all of respondent's allegations in his affidavit of December 14, 2007, there was sufficient evidence to support the conclusion that appellant sometimes impeded respondent's parenting time.

Appellant further contends that the court's conclusion that her conduct had a negative impact on C.C. is without evidentiary basis. But the record contains two voicemail messages from C.C. to respondent revealing that C.C. had developed a very negative attitude toward her father. And a telephone call from C.C. to respondent about an inappropriate topic further indicates that appellant had exerted negative influence upon C.C. It is unnecessary to recite the details of these items of evidence. It is sufficient to

note that the contents of the voicemail messages and the telephone call strongly suggest adult manipulation. Although respondent has not been blameless in the parties' ongoing struggles over issues relating to C.C., our standard of review compels our conclusion that the court's findings regarding appellant's conduct and its impact on C.C. were not clearly erroneous and that we must affirm those issues.

Attorney Fees

Each party moved for an award of bad-faith attorney fees. Although there appear to have been procedural irregularities in some of the filings, the court ruled that there was "no basis for [appellant's] request for bad faith fees from [respondent]."

The court did, however, award conduct-based attorney fees to respondent but stayed the award on the condition that appellant comply with respondent's allotted parenting time.

We cannot determine from the record under what legal authority the court was proceeding in awarding attorney fees to respondent. The possibilities are Minn. Stat. § 518.14, subd. 1; Minn. Stat. § 549.211 (2008); or Minn. R. Civ. P. 11.03. Each of those statutes provides for procedural steps to be followed before an award is appropriate. The record is devoid of evidence that the requisite procedural steps were followed. Additionally, the court failed to make specific findings to support a conduct-based award as a sanction, ruling only that "[s]ome of [appellant's] arguments are without merit." Finally, there is nothing in the record to support the award of \$999 as being reasonable. For these reasons, the award of attorney fees to respondent must be reversed.

Affirmed in part and reversed in part.