

*This opinion is nonprecedential except as provided by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
A21-1268**

In re the Marriage of:
Charles Ray Ferguson, petitioner,
Appellant,

vs.

Cheri Ferguson,
Respondent.

**Filed August 29, 2022
Affirmed
Johnson, Judge**

Blue Earth County District Court
File No. 07-FA-19-1549

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Minnesota (for appellant)

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Considered and decided by Slieter, Presiding Judge; Johnson, Judge; and Hooten,
Judge.*

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Charles Ray Ferguson and Cheri Lynne Ferguson were married for approximately 30 years before their marriage was dissolved pursuant to a mediated settlement agreement. After the mediation but before the entry of the judgment and decree, Charles filed a motion in which he sought to change the terms of the settlement. The district court denied Charles's motion and awarded Cheri conduct-based attorney fees and costs in the amount of \$6,510. We conclude that the district court did not err in its award of attorney fees and costs. Therefore, we affirm.

FACTS

Charles and Cheri were married in 1989. They separated in December 2011, and Charles petitioned for dissolution of the marriage in 2019.

In January 2020, the parties and their attorneys participated in a mediation session. At the conclusion of the mediation session, the parties and their attorneys signed a single-spaced, one-page, eight-paragraph agreement, which states that it is "a full and final settlement of all claims." The parties agreed that Cheri would be awarded the jointly owned marital homestead, which would require Charles to execute a quit-claim deed. Paragraph 3 of the agreement states, "Within 10 days of receiving the Husband's signature on the Stipulated Decree of Dissolution, Wife will mail a check payable to Husband's attorney's trust account in the amount of \$67,500.00. Husband's attorney will not distribute those funds until the entry of the Decree of Dissolution herein." The parties agreed that Cheri's payment of \$67,500 would "equalize the overall property division" between the parties.

The parties agreed at mediation that Cheri's attorney would draft a stipulated judgment and decree and that each party would sign the documents necessary to implement the settlement. Cheri's attorney sent a draft to Charles's attorney in early February 2020. Consistent with paragraph 3 of the mediated settlement agreement, paragraph 5.d. of the draft stipulation stated that Cheri's attorney would mail a check to Charles's attorney "within ten (10) days after receiving [Charles]'s signature on this Stipulated Decree" and that Charles's attorney would "not distribute the funds to [Charles] until after the entry of the Decree of Dissolution by the Court Administrator herein."

Meanwhile, Charles retained an elder-law attorney, who contacted Charles's family-law attorney to share his opinion that the mediated settlement agreement might cause adverse consequences for Charles in connection with his receipt of medical-assistance benefits. Specifically, the elder-law attorney believed that, if the parties signed the draft stipulation before Charles's interest in the homestead was deeded to Cheri, Nicollet County might treat the transaction as a transfer for less than fair market value to a non-relative and, consequently, might assess a financial penalty on his medical-assistance benefits. In March 2020, Charles's attorney sent an e-mail message to Cheri's attorney, asking that she revise the draft stipulation to provide for the transfer of the marital homestead before—rather than after—the entry of the judgment and decree. Cheri's attorney refused to make the requested revision.

In June 2020, Charles filed a "motion to enforce mediated agreement" in which he asked the district court to (1) interpret the mediated settlement agreement to require the transfer of property before the entry of the judgment and decree; (2) in the alternative, hold

Cheri liable for any “unexpected fees/taxes/costs” incurred by him; (3) in the alternative, vacate the agreement; and (4) order Cheri to pay him conduct-based and need-based attorney fees. Cheri filed a cross-motion in which she asked the district court to (1) approve the draft stipulated judgment and decree; (2) order Charles to pay her conduct-based attorney fees and costs; and (3) allow her to deduct a fee award from Charles’s property settlement payment.

In December 2020, the district court filed a nine-page order in which it granted Cheri’s motion, denied Charles’s motion, and gave Cheri an opportunity to submit evidence of her attorney fees and costs. Cheri’s attorney filed an affidavit describing attorney fees of \$6,058 and costs of \$452 for a total of \$6,510. Charles objected to the amount of attorney fees sought by Cheri. The district court filed another order awarding attorney fees and costs in the full amount requested by Cheri. The district court entered its judgment and decree in August 2021. Charles appeals.

DECISION

Charles argues that the district court erred by granting Cheri’s motion for conduct-based attorney fees and costs and by awarding her \$6,510.

This court has recognized a party’s right in a dissolution case to obtain conduct-based attorney fees and costs from an opposing party “who unreasonably contributes to the length or expense of the proceeding.” Minn. Stat. § 518.14, subd. 1 (2020); *see also Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295-96 (Minn. App. 2007); *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001). This court applies an abuse-of-discretion standard of review to a district court’s award of attorney fees and costs under section

518.14. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999); *Rutten v. Rutten*, 347 N.W.2d 47, 51 (Minn. 1984); *Szarzynski*, 732 N.W.2d at 295.

A. Finding of Unreasonableness

Charles first contends that the district court erred by finding that he unreasonably contributed to the length or expense of the proceeding.

The district court thoroughly analyzed and ultimately rejected Charles's arguments in support of his motion for relief from the mediated settlement agreement. Specifically, the district court reasoned that the mediated settlement agreement was unambiguous and should not be reformed or vacated based on Charles's unilateral mistake. After concluding its legal analysis of the underlying motions, the district court discussed Cheri's request for attorney fees and costs. The district court noted that Charles's "informal request [to Cheri] to modify the Mediated Agreement to exchange property and release the equalization payment prior to the entry of the Judgment and Decree was not unreasonable." But the district court reasoned that Charles's "insistence on bringing the motion to modify the Mediated Agreement was unreasonable and contributed to the length and expense of the proceeding for Wife."

Charles challenges the district court's ruling in only a general way. He contends that the district court did not explain specifically why his conduct was unreasonable. But the district court's determination of unreasonableness is evident from the district court's legal analysis of Charles's underlying motion. Charles re-asserts the arguments he made in his motion, but he does not argue on appeal that the district court erred by denying his motion. It is obvious that Cheri incurred fees and costs that she would not have incurred

if Charles had followed through on the mediated settlement agreement, which was intended to be “a full and final settlement of all claims.” Our deferential standard of review respects a district court’s superior position from which to evaluate the reasonableness of parties’ conduct in litigation. In this case, there is no reason to disturb the district court’s discretionary determination concerning the reasonableness of Charles’s motion.

Thus, the district court did not err by finding that Charles unreasonably contributed to the length or expense of the proceeding.

B. Amount of Award

Charles also contends that the district court erred in determining the amount of the award of attorney fees and costs.

The district court’s award of \$6,510 is based on an affidavit submitted by Cheri’s attorney, which was accompanied by two monthly invoices with detailed, itemized time entries. Charles contends on appeal that the amount of fees incurred is unreasonable on the grounds that the time entries of Cheri’s attorneys sometimes are excessive and sometimes are duplicative of the time entries of the attorneys’ paralegal.

Charles made similar arguments to the district court. The district court responded first by noting that a rule of court expressly allows for the recovery of fees incurred by paralegals. *See* Minn. R. Gen. Prac. 119.02(1). The district court also considered “the reasonableness and necessity of the attorney fees” incurred by Cheri. The district court stated that it had “spent considerable time researching the issues raised by Husband’s motion” and, accordingly, was of the view “that the time spent by [Cheri’s attorneys] to prepare Wife’s motion and supporting affidavit and legal memorandum is not

unreasonable.” The district court specifically stated that the time spent by Cheri’s attorney in conferencing with her when preparing the motion papers “was necessary in order to defend against Husband’s motion.” The district court added that “there is no reason for the Court to doubt that the time that was actually spent by Wife’s counsel was either necessary or reasonable.” The record reflects that the district court carefully exercised its discretion in determining the reasonableness of the attorney fees and costs that should be awarded, and the award is supported by the affidavit and exhibits submitted by Cheri’s attorney.

Thus, the district court did not err by awarding a total of \$6,510 in attorney fees and costs.

Affirmed.