STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1549

In re the Marriage of: Allison Catherine Buckner, petitioner,
Respondent,

vs.

Bernard Joseph Robichaud, Jr.,
Appellant.

Filed June 6, 2022
Affirmed
Klaphake, Judge[*]

Hennepin County District Court
File No. 27-FA-13-6791

Alan C. Eidsness, Benjamin J. Hamborg, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent)

Robert A. Gust, Gust Law Firm, PLLC, Bloomington, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Klaphake, Judge.

NONPRECEDENTIAL OPINION

KLAPHAKE, Judge

Appellant Bernard Joseph Robichaud, Jr., a licensed attorney, challenges the district court's order awarding attorney fees to respondent Allison Catherine Buckner, arguing that

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

the district court (1) does not have the inherent authority to award attorney fees based on conduct occurring outside of a proceeding; (2) made findings not supported by the record; and (3) erred by awarding all the fees claimed without making adequate findings on the reasonableness of the fees. We affirm.

DECISION

I. Inherent Authority

"[D]istrict courts possess inherent authority to impose sanctions as necessary to protect their 'vital function—the disposition of individual cases to deliver remedies for wrongs and justice freely and without purchase; completely and without denial; promptly and without delay, conformable to the laws.'" *Peterson v. 2004 Ford Crown Victoria*, 792 N.W.2d 454, 462 (Minn. App. 2010) (quoting *Patton v. Newmar Corp.*, 538 N.W.2d 116, 118 (Minn. 1995)). This authority includes the power to award attorney fees as sanctions when a party has "acted in bad faith, vexatiously, wantonly, or for oppressive reasons." *Id.* (quoting *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45-46 (1991)). We review a district court's use of inherent authority to award sanctions under an abuse of discretion standard, which is only met "when it is clear that no reasonable person would agree with the [district] court's assessment of what sanctions are appropriate." *Patton*, 538 N.W.2d at 119. But we review questions of law arising from an attorney-fee award de novo. *Sanvick v. Sanvick*, 850 N.W.2d 732, 737 (Minn. App. 2014).

Here, after the dissolution of the parties' marriage, Robichaud and Buckner executed a binding mediation settlement agreement ("MSA"), which provided that Robichaud would transfer a college savings account ("college account") to the parties'

daughter when she turned twenty-one years old on August 17, 2019.[1] Robichaud ignored his legal obligation for nearly one year. Then, in June 2020, Buckner's attorney contacted Robichaud to obtain a medallion guarantee signature, needed to transfer the college account. Robichaud was uncooperative. Over the next several months, Robichaud and Buckner's attorney corresponded through email regarding the transfer. In his emails, Robichaud made disparaging remarks, insults, and baseless demands for payment, including that he be compensated for his services in effectuating the transfer and that daughter gift back half the funds in the college account. Robichaud eventually transferred the college account to daughter on February 24, 2021.

Subsequently, Buckner moved for attorney fees under Minn. Stat. § 518.14, subd. 1 (2020) and such other relief as the court deemed just and equitable. The district court found that Robichaud's conduct occurred outside the litigation process and thus could not support an award of conduct-based attorney-fees under section 518.14.[2] It then determined it was

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[1] A mediated settlement agreement is a species of stipulation. In a family case, a stipulation is the agreement between the spouses before it is adopted or rejected by the district court, while a stipulated judgment is the judgment the district court enters based on that agreement. *See Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000) (noting that "[t]he district court is a third party to dissolution proceedings and has the authority to refuse to accept the terms of a stipulation in part or *in toto*" (internal quotation marks and citation omitted)). If a district court adopts a stipulation and enters a judgment based on that stipulation, the stipulation ceases to exist as a separate creature and is merged into the judgment. *See Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). Although the district court did not adopt the parties' stipulation here, that does not preclude the parties from litigating their claims. *See Toughill*, 609 N.W.2d at 638 n.1.

[2] While conduct occurring outside the litigation process cannot be the basis for a conduct-based fee award under Minn. Stat. § 518.14, subd. 1, *Geske v. Marcolina*, 624 N.W.2d 813, 818-19 (Minn. App. 2001), this court has identified circumstances under which a district court can award attorney fees generated in litigation ancillary to a dissolution under Minn. Stat. § 518.14, subd. 1. *See Brodsky v. Brodsky*, 733 N.W.2d 471, 477-78 (Minn. App.

appropriate to award attorney fees under its inherent authority because the rules and statutes did not fully allow for an appropriate remedy for Robichaud's "dilatory, non-cooperative, and unreasonable" conduct.

On appeal, Robichaud argues that the district court lacks the inherent authority to award attorney fees for conduct outside of a proceeding. While the supreme court has never specifically addressed the scope of the district court's authority to award attorney fees for conduct occurring outside of the litigation process, it has repeatedly recognized that "courts are vested with considerable inherent judicial authority." *See Patton*, 538 N.W.2d at 118 (affirming the district court's use of its inherent authority to sanction a party for conduct that occurred approximately three years before the proceeding began). It has also acknowledged that the "task of determining what, if any, sanction is to be imposed is implicated by the broad authority provided the [district] court." *Id.* at 119. Based on this acknowledgement, and absent any specific exclusion of attorney fees from possible sanctions, we conclude that it is within the district court's discretion to use its inherent authority to award attorney fees as a sanction for conduct that occurred outside of the litigation process.

II. Factual Findings

To award attorney fees under its inherent authority, there must be a finding of bad faith that the record supports. *Peterson*, 792 N.W.2d at 462. Robichaud does not dispute

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2007). Here, the district court determined that the appropriate analysis for addressing whether to award sanctions was the analysis associated with the exercise of its inherent authority. Because that determination is not challenged on appeal, this court is not addressing the propriety of that determination.

that his behavior meets the bad-faith standard for sanctions, but he challenges the district court's finding that he breached the MSA and argues that there was not a readily apparent way to transfer the college account in the summer and fall of 2020. We will set aside a district court's factual findings only if they are clearly erroneous. *Tornstrom v. Tornstrom*, 887 N.W.2d 680, 683 (Minn. App. 2016), *rev. denied* (Minn. Feb. 14, 2017). "Factual findings are clearly erroneous when they are manifestly against the weight of the evidence or not reasonably supported by the evidence as a whole. When determining whether the district court's findings are clearly erroneous, we view the record in the light most favorable to the court's findings." *Id.* (citations omitted).[3]

Robichaud argues that the district court misinterpreted the plain language of the MSA by reading it to require Robichaud to transfer the college account to daughter on her twenty-first birthday. He asserts that the MSA merely awarded the college account to daughter once she reached twenty-one, that she did not request a transfer at that time, and that there were logical tax reasons for leaving the college account in place. A mediated settlement agreement is a contract, so it is subject to rules of contract interpretation and enforcement. *Theis v. Theis*, 135 N.W.2d 740, 744 (Minn. 1965). "When the language is clear and unambiguous, we enforce the agreement of the parties as expressed in the

[3] Robichaud asserts that this court should apply the standard of review for summary judgment and interpret the facts in the light most favorable to the losing party because the district court's factual findings were based only on a written record. But because Robichaud cites no legal authority to support his assertion, that assertion is not properly before this court. *See State Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed question); *Brodsky*, 733 N.W.2d at 479 (applying *Wintz* in a family law appeal). Moreover, we are aware of no authority supporting his assertion.

language of the contract." *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). Whether a contract is ambiguous is a legal question reviewed de novo. *Id.*

The MSA states: "[Robichaud] shall pay [daughter's] fall 2018 tuition from the [college account]; the remainder of the account shall be maintained, subject to market gains/losses, and awarded to [daughter] on her 21st birthday." There is no language in the MSA indicating that daughter needed to request the transfer. Instead, the MSA provides a specific date on which Robichaud was to transfer the account. Thus, the MSA's language unambiguously shows that Robichaud had an affirmative duty to transfer the college account to daughter on August 17, 2019.

Robichaud argues that the performance could not have reasonably occurred in the summer or fall of 2020 due to the ongoing COVID-19 pandemic. However, contrary to Robichaud's assertion, Buckner's attorney proposed two ways to obtain the medallion signature in an email dated July 29, 2020. Robichaud addressed neither suggestion in his response, rather, he accused Buckner of fraud, made disparaging remarks, and again demanded compensation. Thus, the district court did not err in rejecting Robichaud's excuse for not transferring the college account sooner.

The record supports the district court's finding that Robichaud acted in bad faith to justify the award of attorney fees. Robichaud, a veteran attorney, willfully ignored his legal obligation to transfer the college account to daughter on her twenty-first birthday and then engaged in "dilatory, non-cooperative, and unreasonable" conduct. Although the district court's order did not quote Robichaud's language, the court summarized his inappropriate comments:

> Throughout his emails from June through August of 2020, [] Robichaud repeatedly disparaged [] Buckner, [Buckner's attorney,] and [daughter] (if she would not agree to "gift" him half of the college account). He accused [] Buckner and [her attorney] of fraud; implied that [] Buckner intentionally waited until the pandemic began to request the transfer in order to threaten [] Robichaud's health; and disparaged [] Buckner for not working.

Our review of the record supports the district court's finding. In his emails, Robichaud referred to Buckner as a "rentier," a "lazy fraud," and "an unrepentant descendant of slave owners" and accused Buckner of committing tax and divorce fraud. He also stated that Buckner and daughter "will do anything for money except work," and that "it's not healthy that [daughter] has been modeled cowardly rentier behavior by [Buckner]." Further, Robichaud made several comments directed at Buckner's attorney referring to his professional ethics and rates.

In sum, the district court's finding of a bad-faith basis to justify the attorney-fee award is supported by the record.

III. Reasonableness

Robichaud next argues that the fees awarded here were excessive and that the district court's failure to make findings on the reasonableness of the time spent and the rates charged requires remand. District courts have broad authority to determine what sanction is to be imposed. *See Patton*, 538 N.W.2d at 119. And the party "challenging the [district] court's choice of a sanction has the difficult burden of convincing an appellate court that the [district] court abused its discretion—a burden which is met only when it is clear that no reasonable person would agree with the [district] court's assessment of what

sanctions are appropriate." *Id.* (quotation omitted). The district court awarded attorney fees as a sanction based in part on its desire to preclude Robichaud, a veteran attorney, from engaging in similar misconduct in the future. On this record, we cannot agree that all reasonable persons would disagree with the district court's assessment. Accordingly, the district court adequately justified the sanction imposed here as being necessary to deter future improper conduct.

Affirmed.