**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A12-1584**

In re the Marriage of:
Jessica Mae Husman, petitioner,
Respondent,

vs.

Ralph Joseph Husman,
Appellant .

**Filed May 13, 2013**
**Affirmed**
**Peterson, Judge**

Scott County District Court
File No. 70-FA-10-6265

Kristin L. Davis, Sieloff and Associates, P.A., Eagan, Minnesota (for respondent)

Bruce M. Rivers, Rivers & Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Chutich, Judge.

**U N P U B L I S H E D  O P I N I O N**

**PETERSON**, Judge

In this post-dissolution dispute, appellant-father argues that the district court should not have awarded respondent-mother (a) reimbursement for uninsured medical

expenses incurred by an emancipated child; and (b) conduct-based attorney fees. We affirm.

## FACTS

The parties were divorced pursuant to a stipulated judgment and decree entered on May 6, 2010. The parties have no children together, but appellant-father Ralph Joseph Husman adopted respondent-mother Jessica Mae Husman's son. The dissolution judgment provided for child support to continue until the son became emancipated or turned 18, "provided that if [the son] is still attending secondary school after [he] attains the age of eighteen (18) years support with respect to [the son] shall continue until such time as the child is no longer attending secondary school but not beyond the time the child attains the age of twenty (20)."

The dissolution judgment included the following provision regarding health insurance for the son:

> [Mother] intends to obtain coverage for the minor child through Minnesota Care or medical assistance. [Mother] shall apply for said coverage within thirty days from the date of entry of the Judgment and decree. If the minor child does not qualify for said coverage, [father] shall obtain health insurance for the minor child available through his employment or otherwise. If [father] obtains such coverage, [mother] shall reimburse to [father] a portion of the same based on [mother's] PICS percentage, which is currently 46%.
>
> The parties' obligation to maintain health insurance for the minor child shall continue until the later of (a) the time at which there is no longer a child support obligation or (b) the time at which a party is no longer entitled to continue dependent health insurance coverage under his or her insurance policy.

> Each party shall pay one-half of the out-of-pocket costs, co-payments and deductibles incurred for medical, dental, optical, orthodontic and medical prescription expenses for the minor child.
>
> To the extent that there are any medical, dental, optical, orthodontic and medical prescription expenses incurred by a party for the minor child for which such expenses are to be divided herein, the party not incurring the expense shall reimburse to the other party his or her respective PICS percentage as provided hereinabove . . . .

Mother's application for medical-assistance (MA) benefits for the son was denied effective January 1, 2011. Mother stated in an affidavit that she reapplied for MA benefits in July 2011, and again her application was denied. The son turned age 18 in October 2011. On December 7, 2011, the son withdrew from high school, and he obtained his GED on January 10, 2012. Mother stated that she again applied for MA benefits after her son was hospitalized from January 11 through 16, 2012, and once again her application was denied.

Mother submitted to the district court an affidavit of health-care expenses stating that she had incurred medical and dental expenses on behalf of her son in the amount of $23,759.75 and requesting that father reimburse her for 50% of those expenses. Father contested his liability for expenses incurred after the child reached age 18 and withdrew from school. Mother filed a responsive motion requesting reimbursement from father for one-half of the medical expenses and one-half of other expenses for the child.[1]

[1] The other expenses are not at issue in this appeal.

Following a hearing, the district court granted mother's motion. On mother's request for reconsideration, the district court filed an amended order correcting a clerical error. In the amended order, the district court found:

> 6. On January 11, 2012, [the son] was admitted to the hospital. His hospital stay lasted until January 16, 2012. The total unreimbursed medical expenses related to this incident were $21,286.20, of which [father's] half would be $10,643.10. It was not clear whether a final decision had yet been made regarding public assistance on this bill or whether the parties have attempted to have it reduced as it involved an uninsured patient. Either of these options could significantly reduce the amount actually owed.

The district court ordered father to pay one-half of the final obligation owing on the medical expenses[2] and ordered mother to "exhaust all options in obtaining public assistance for payment of the large hospital bill and make diligent efforts to have the bills reduced due to the fact that they will be paid out of pocket rather than by insurance." The district court ordered father to pay one-half of the medical expenses incurred after December 2011 because father could have maintained health-insurance coverage for the son under Minn. Stat. § 62A.302 (2012) and father "willfully violated the Judgment and Decree by refusing to provide medical insurance for [the son]." The district court also awarded mother $1,100 in conduct-based attorney fees.

This appeal followed.

[2] Mother does not dispute her responsibility to pay one-half of the medical expenses.

## D E C I S I O N

### I.

"Because the interpretation of a written document is a question of law, we do not defer to the district court's interpretation of a stipulated provision in a dissolution decree." *Anderson v. Archer*, 510 N.W.2d 1, 3 (Minn. App. 1993). But "[i]f a writing is ambiguous, extrinsic evidence may be admitted to resolve the ambiguity. When extrinsic evidence is admitted, the meaning of ambiguous language is a question of fact." *Id.* at 4.

Father argues that he is not required to pay for any expenses incurred during the January 2012 hospitalization because the parties' son "was a fully emancipated adult at the time" and the dissolution judgment requires only that each party pay one-half of the medical expenses incurred "for the minor child." But the district court expressly stated that its order that father pay one-half of the hospital expenses "is not based on [father's] obligation to pay half of uninsured/unreimbursed medical expenses, but is instead based on [father's] failure to obtain and maintain health insurance for [son] as long as it was available, even beyond the date of his emancipation."

The child-support statute provides:

> A party who fails to carry court-ordered dependent health care coverage is liable for the joint child's uninsured medical expenses unless a court order provides otherwise. A party's failure to carry court-ordered coverage, or to provide other medical support as ordered, is a basis for modification of a support order under section 518A.39, subdivision 2.

Minn. Stat. § 518A.41, subd. 15(c) (2012). "'Child' means an individual under 18 years of age, an individual under age 20 who is still attending secondary school, or an

individual who, by reason of physical or mental condition, is incapable of self-support." Minn. Stat. 518A.26, subd. 5 (2012).

The district court found that, although the son was no longer a child for purposes of the child-support statutes, father agreed, in the stipulated dissolution judgment, to continue providing health insurance for the son following emancipation until coverage was no longer available. The court has continuing jurisdiction to enforce the terms of a dissolution judgment even after a child becomes emancipated. *Bjordahl v. Bjordahl*, 308 N.W.2d 817, 818 (Minn. 1981) (holding that effort to collect child-support arrearages is not barred simply because children are no longer minors). And, under the dissolution judgment, father's obligation to maintain health insurance continues until he "is no longer entitled to continue dependent health insurance coverage under his . . . insurance policy."

A health plan "that provides dependent coverage must define 'dependent' no more restrictively than the definition provided in section 62L.02." Minn. Stat. § 62A.302, subd. 2. Minn. Stat. § 62L.02, subd. 11 (2012), defines "dependent" to include an unmarried child under age 25. The parties' son meets this definition, which means that father was entitled to continue dependent health-insurance coverage for the son and, therefore, that father was obligated to maintain health insurance for the son even though he was an emancipated adult.

Father also argues that he was not obligated to maintain medical insurance for his son because the dissolution judgment states that mother "intends to obtain coverage for the minor child through Minnesota Care or medical assistance," which means that mother was required to apply for both Minnesota Care and medical assistance. Father contends

that because the record does not indicate that mother ever applied for coverage through Minnesota Care, his obligation to obtain health insurance was never triggered.

Mother argues that the issue of whether she was obligated to apply for Minnesota Care is not properly before this court because it was raised for the first time on appeal. Before the district court, father argued only that he was not liable for any expenses incurred as a result of the January 2012 hospitalization because, at that time, his son was 18 years old and no longer attending school. "[A] reviewing court generally may consider only those issues that the record shows were presented to and considered by the [district] court." *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 673 (Minn. 2001). "Nor may a party obtain review by raising the same general issue litigated [before the district court] but under a different theory." *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Mother argued at the hearing before the district court "that under the judgment and decree [she] was obligated to apply for medical assistance or [Minnesota] Care, and she did . . . so. And if she was refused that then [father] was obligated to purchase health insurance for the minor child." The district court's decision was based on father's obligation to obtain health insurance. The district court found: "[Mother] attempted on multiple occasions to obtain public medical insurance for [the son] and was denied. She informed [father] of this fact but he refused to obtain insurance for [the son] through his employer." Because mother specifically argued that she was obligated to apply for medical assistance or Minnesota Care to trigger father's obligation to provide insurance, and father did not argue that his obligation did not arise until mother applied for both

medical assistance and Minnesota Care, father has waived the issue of whether mother was obligated to also apply for Minnesota Care. *See id.* (stating that date cause of action accrued not properly before reviewing court when plaintiff failed to challenge defendant's argument on date cause of action accrued).

**II.**

Minn. Stat. § 518.14, subd. 1 (2012) allows an award of conduct-based attorney fees "against a party who unreasonably contributes to the length or expense of the proceeding." A conduct-based attorney-fee award is reviewed for an abuse of discretion. *Brodsky v. Brodsky*, 753 N.W.2d 471, 476 (Minn. App. 2007).

The district court concluded:

> [Father] has unreasonably contributed to the length and expense of this litigation. He refused to pay his share of medical and other expenses prior to December 2011 when there was no good faith basis to object. Although [father] had a good faith argument regarding his responsibility to pay half of the January 2012 hospital bill under the unreimbursed medical expense provision, this was only an issue because of his willful, unjustified refusal to obtain medical insurance for [his son]. Based on written submissions and Court time expended in association with this issue, it is clear that [mother] has expended in excess of $1,000 in attorney's fees.

The district court noted that although an affidavit of fees is required for claims of $1,000 or more, the court has discretion to waive that rule. *Rooney v. Rooney*, 782 N.W.2d 572, 577 (Minn. App. 2010).

Father argues that "nothing in the record indicates [he] unreasonably contributed to the length and expense of the proceedings by exercising his statutory right to contest the notice of intent to collect the unreimbursed or uninsured medical expenses." Father

contends that he simply followed the statutory procedures for filing a motion to contest the amount requested in mother's written notice of intent to collect unreimbursed or uninsured medical expenses. But father's argument does not address the district court's stated reason for awarding attorney fees even though father had a good-faith argument regarding his responsibility to pay half of the January 2012 hospital bill. The district court's attorney-fee award was not based on father's conduct in contesting the amount requested in the notice of intent to collect; the award was based on the fact that the motion to contest the amount requested "was only an issue because of [father's] willful, unjustified refusal to obtain medical insurance." A conduct-based fee award may include fees that the party who receives the award would not have incurred if the party who is ordered to pay the award had timely met obligations imposed by the dissolution judgment. *Brodsky*, 733 N.W.2d at 475-76.

**Affirmed.**