FILED
April 30, 2024
OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA

IN COURT OF APPEALS

A23-1488

In re the Marriage of:

Matthew Beland, petitioner,

Appellant,

vs.

Heidi Beland NKA Heidi Rylander,

Respondent.

ORDER OPINION

Polk County District Court
File No. 60-FA-15-340

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Larkin, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Matthew Beland (father) and respondent Heidi Rylander (mother) divorced in 2015 pursuant to a stipulated agreement that awarded them joint legal and physical custody of their two minor children. Both parties have since remarried. Since the dissolution, the parties have engaged in extensive trial and appellate litigation regarding child support, child custody, and petitions for harassment restraining orders generating—to date—18 separate appellate files.[1]

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[1] Related appellate matters include A20-0957, A20-0958, A20-1070, A21-0002, A21-1485, A21-1486, A21-1487, A21-1488, A21-1675, A22-0086, A22-1467, A22-1468, A22-1469, A22-1761, A23-0570, A23-1320, and A23-1321.

2. In May 2020, mother moved to modify child custody. Two months later, father did the same. At that time, he was pro se. But soon after he retained an attorney to represent him in only custody-modification matters.

3. At an August 6 hearing, the district court heard arguments to determine whether the parties had each made a prima facie case for custody modification. The district court also heard arguments on several other motions, including mother's motions to determine father to be a frivolous litigant under Minn. R. Gen. Prac. 9 and for attorney fees under Minn. R. Gen. Prac. 11. Mother argued that father is a frivolous litigant because he continued to relitigate issues already decided or under advisement, refused to work in good faith toward resolving conflict, and most of his motions were unsuccessful. She requested $3,000 in attorney fees based on her contention that father had unreasonably contributed to the length and expense of the proceeding by repeatedly filing last-minute motions that required additional hearings, violating the district court's discovery orders, and filing motions for ex parte relief. On the morning of the hearing, father filed motions for rule 9 and rule 11 sanctions against mother. The district court set a hearing on father's sanction motions for January 21, 2021.

4. In a November 4, 2020 order, the district court determined that an evidentiary hearing was warranted on the parties' respective motions to modify custody. The district court granted both of mother's motions and imposed frivolous-litigant filing preconditions on father. Later that month, father's current wife, attorney Sarah Kyte, filed a certificate indicating that she was representing father in "pending non-custody issues."

5. Before the January 21, 2021 hearing on father's sanction motions, two discovery motions were filed. First, the parties' former mediator moved to quash father's subpoena against him. Second, mother moved for a protective order, seeking to quash father's numerous discovery requests related to his sanction motions. Mother also requested approximately $10,077 in attorney fees she incurred in responding to these extensive discovery requests.

6. By order dated March 24, 2021, the district court granted the mediator's motion to quash and limited the discovery father propounded on mother because the requests were "improper, overly broad, unduly burdensome, and inappropriate." The district court also awarded mother's requested attorney fees based on the inappropriate discovery requests; Kyte's failure to participate in a joint-discovery conference with father's child-custody attorney and mother's attorney—resulting in duplicative work and added expenses to the parties; Kyte's conflicts of interest and material misrepresentation of the contents of a police report to the court; overly broad sanction motions intended to harass mother; attempts to relitigate matters already decided; and failure to cooperate with other attorneys involved with the case. Finally, the district court clarified that the frivolous-litigant filing preconditions apply to father's attorneys.

7. Father commenced this appeal, seeking relief from several district court orders. This court filed an order limiting the appeal to review of the November 4, 2020 frivolous-litigant order and the March 24, 2021 order awarding attorney fees. Father asserts seven challenges to these orders, none of which persuades us to reverse.

8. First, father argues that mother did not serve him with a rule 9 motion and that the district court lacked jurisdiction to designate him a frivolous litigant because no motion was pending before the district court at the time mother brought her rule 9 motion. The record defeats both arguments, showing that mother served her rule 9 motion on father at a time when father's custody-modification motion was pending.

9. Second, father asserts that the district court did not find that he is a frivolous litigant. This argument is meritless. The district court's order expressly states that it "finds [father] to be a frivolous litigant."

10. Third, father contends that the district court abused its discretion because the record does not support its frivolous-litigant findings. We review a district court's frivolous-litigant determination for an abuse of discretion. *Szarzynski v. Szarzynski*, 732 N.W.2d 285, 295 (Minn. App. 2007). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). A "frivolous litigant" includes a person who (1) after a claim has been finally determined against them, "repeatedly relitigates or attempts to relitigate" the validity of the prior "determination against the same party"; (2) "repeatedly serves or files frivolous motions, pleadings, letters, or other documents . . . or engages in oral or written tactics that are frivolous or intended to cause delay"; and (3) maintains claims that are not well-grounded in law. Minn. R. Gen. Prac. 9.06(b)(1)-(3). On motion of a party or at its own initiative, a district court may impose "preconditions on a frivolous litigant's service or filing of any new claims, motions or requests." Minn.

R. Gen. Prac. 9.01. In determining whether a person is a frivolous litigant, the district court considers seven enumerated factors. Minn. R. Gen. Prac. 9.02(b). If a district court "determines that a party is a frivolous litigant" and that "sanctions are appropriate," it must state on the record "its reasons supporting that determination." Minn. R. Gen. Prac. 9.02(c). "An order imposing preconditions on serving or filing new claims, motions, or requests shall only be entered with an express determination that no less severe sanction will sufficiently protect the rights of other litigants, the public, or the courts." *Id.*

11. In determining that father is a frivolous litigant, the district court found that six of the seven factors weighed in favor of deeming father a frivolous litigant, and the remaining factor did not apply. The district court found that the frequency with which father's motions were unsuccessful was increasing, he was unlikely to prevail on his pending motions, he failed to work with mother in good faith to resolve issues, prior admonishments by the court and sanctions did not deter his conduct, and the new sanctions were necessary to "curb [father's] repetitive and excessive pleadings." We note the broader context of these findings—the district court's continued involvement with these parties since 2015. Against this backdrop, father has not carried his burden to identify evidence in the extensive record that demonstrates clear error in the district court's findings. Minn. R. Civ. App. P. 128.02, subd. 1(c), 128.03; *see Hecker v. Hecker*, 543 N.W.2d 678, 681-82 n.2 (Minn. App. 1996) ("[M]aterial assertions of fact in a brief properly are to be supported by a cite to the record, and such cites are particularly important where . . . the record is *extensive*." (emphasis added)). And our careful review of the record convinces us that the district court's findings are amply supported. In short, father has not shown that

the district court abused its discretion in determining that father is a frivolous litigant and filing conditions are warranted.

12. Fourth, father argues that the rule 9 filing preconditions are unwarranted and ambiguous. We disagree. The district court's order rests on the correct legal standard, outlines a detailed procedure to use for future filings, and states the reasons for imposing frivolous-litigant sanctions. *See* Minn. R. Gen. Prac. 9.02(c). Father has not identified any abuse of discretion.

13. Fifth, father contends that the district court abused its discretion by failing to stay the proceedings after father brought his rule 9 motion. But he fails to identify how he was prejudiced by the district court's decision not to do so. *See Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (stating that, in a family-law appeal, "appellant bears the burden of demonstrating that [the alleged] error was prejudicial"), *rev. denied* (Minn. Oct. 24, 2001); *see also* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). And given the district court's familiarity with the parties and the history of this litigation, and its focus on the appropriate issues as demonstrated in the frivolous-litigant order, we see no abuse of discretion. *See Szarzynski*, 732 N.W.2d at 296-97 ("Generally, whether to continue a hearing is discretionary with the district court.").

14. Sixth, father challenges the attorney-fee award. A district court may award attorney fees if a party unreasonably contributes to the length or expense of a proceeding. Minn. Stat. § 518.14, subd. 1 (2022); *see Szarzynski*, 732 N.W.2d at 295 ("Conduct-based fee awards may be awarded against a party who unreasonably contributes to moving the length or expense of the proceeding and are discretionary with the district court."). When

a party seeks attorney fees in excess of $1,000, they must submit their request by motion. Minn. R. Gen. Prac. 119.01. The motion must be accompanied by an affidavit of any attorney of record detailing the work performed, the attorney's hourly rate, an itemization of all expenses, and the affiant's statement related to the work performed for the client. Minn. R. Gen. Prac. 119.02. The motion must also be accompanied by a memorandum explaining the basis for recovery and how the requested award was calculated. Minn. R. Gen. Prac. 119.04. The requesting party bears the burden of establishing that the other party's conduct unreasonably contributed to the length or expense of the proceeding. *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). An attorney-fee award must be supported by specific findings. *Richards v. Richards*, 472 N.W.2d 162, 166 (Minn. App. 1991). We review such awards for abuse of discretion. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

15. Mother's attorney submitted the documents required under Minn. R. Gen. Prac. 119 and Minn. Stat. § 518.14, subd. 1. Father's assertion that the district court abused its discretion by awarding attorney fees based on conclusory findings that father's discovery requests were irrelevant to his rule 9 and 11 motions is itself conclusory, and father fails to cite the record. *See State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed question); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal); *Beland v. Beland*, No. A22-1761, 2023 WL 2661922, at *1-2 (Minn. App. Jan. 31, 2023) (order op.) (applying *Wintz* and *Brodsky* in one of father's prior appellate matters); *Beland v. Beland*, No. A21-1675, 2022 WL 3581825, at *3 n.6, *5 n.9

(Minn. App. Aug. 22, 2022) (both footnotes applying *Wintz* and *Brodsky* in another of father's prior appellate matters). Our careful review of the record convinces us that the district court's award of attorney fees because of father's conduct, which "unreasonably contributed to the length or expense of the proceeding," is well supported. *See* Minn. Stat. § 518.14, subd. 1. Accordingly, father has failed to show that the district court abused its discretion by awarding mother $10,000 in attorney fees.

16. Seventh, father argues that the district court abused its discretion by imposing conduct-based attorney fees against him, as a party, based on the conduct of his attorney, Kyte. He relies on *Murrin v. Mosher*, No. A09-314, 2010 WL 1029306, at *9-10 (Minn. App. Mar. 23, 2010), *rev. denied* (Minn. Aug. 10, 2010), for the proposition that Minn. Stat. § 518.14, subd. 1, prohibits the district court from doing so. But *Murrin* is neither binding nor persuasive authority. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating nonprecedential opinions are not binding authority). In *Murrin*, the district court ordered one of the plaintiffs in a real-estate dispute to pay attorney fees under Minn. Stat. § 549.211 (2008) and Minn. R. Civ. P. 11.02 based on her attorney's "pursuit of frivolous legal claims." 2010 WL 1029306, at *10. This court reversed, noting the lack of evidence regarding plaintiff's involvement in the sanctioned conduct and stating that "[m]uch of the offending conduct relates to the pursuit of frivolous legal claims, for which [that plaintiff] cannot be held accountable as a represented party." *Id.* Notably, *Murrin* did not involve an attorney-fee award under Minn. Stat. § 518.14, subd. 1. *See id.* (involving Minn. Stat. § 549.211 and rule 11).

17. Father's reliance on *Sanvik v. Sanvik* is also misplaced. 850 N.W.2d 732 (Minn. App. 2014). In that case, the district court awarded the husband conduct-based attorney fees against the deceased wife's attorney. *Id.* at 735. We reversed, holding that because wife's attorney was not a party to the divorce proceeding, Minn. Stat. § 518.14, subd. 1, did not permit an award of fees. *Id.* at 737-38. That is not the situation here. The district court awarded attorney fees against father—who is undisputedly a party to this action—not his attorney. We reject father's implicit argument that a party is not subject to an attorney-fee award simply because they are represented by an attorney. *See* Minn. R. Prof. Conduct 1.2(a) ("A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation."). And father has not persuaded us, under the unique circumstances here, that the district court abused its discretion by ordering father to pay conduct-based attorney fees under Minn. Stat. § 518.14, subd. 1.

IT IS HEREBY ORDERED:

1. The district court's judgment is affirmed.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 4/30/24

BY THE COURT

Louise Dovre Bjorkman

Judge Louise Dovre Bjorkman