

*This opinion is nonprecedential except as provided by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
A21-0718**

Sokkhan Ka, petitioner,
Appellant,

vs.

Mai Yia Vang,
Respondent.

**Filed November 22, 2021
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-FA-17-2304

Sokkhan Ka, Shoreview, Minnesota (pro se appellant)

John C. Markham, Wagner, Falconer & Judd, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

In this child-custody dispute, appellant-father challenges the district court's award of conduct-based attorney fees to respondent-mother and its refusal to address issues that father raised in a responsive motion. We affirm.

FACTS

Appellant Sokkhan Ka (father) and respondent Mai Yia Vang (mother) are the parents of a minor child born in 2014. Father and mother have never been married. In September 2017, father petitioned to establish custody and parenting time of the child.

In February 2020, mother moved the district court to order father to sign an authorization for release of medical records pursuant to Minn. R. Civ. P. 35.04. In March, the district court granted that motion and ordered father to provide a list of the providers, clinics, and hospitals where he had been treated since the proceedings commenced and to provide signed authorizations to permit mother's counsel to inspect and copy his medical records. After father failed to provide the signed medical authorizations, mother moved the district court to compel him to provide them. She also moved for attorney fees for the time incurred attempting to obtain the authorizations and bringing the motion to compel.

On May 15, the district court granted mother's motion to compel after a hearing on the motion. It ordered father to sign the medical authorizations "immediately." The district court denied mother's motion for attorney fees, but it warned father that if he

continue[d] to act in such a manner as to delay these proceedings and add to the length and expense of the proceeding, [mother] may renew her motion to have these fees awarded. [Father] is advised that if his conduct continues to cause delays and contributes to the length and expense of these proceedings, the court may well award attorney fees to [mother].

Father immediately signed the medical authorizations, but he revoked them on June 24. His reason for revoking the authorizations was that he believed that mother's counsel had had enough time to obtain his medical records and that there was no reason for counsel

to have continued access to that information. On July 31, father provided new signed medical authorizations to mother.

On August 24, father appeared for a deposition. That deposition ended after approximately 45 minutes because father claimed to be having a panic attack. Father also refused to answer several questions, insisting that they were asked in bad faith to “annoy, embarrass, and oppress” him. Mother provided father notice to appear for a September 8 deposition. Father told mother’s counsel that he could not attend that deposition because he had recently started a job and would be working on that date. Although father submitted his work schedule as proof, he redacted his employer’s information for confidentiality reasons. Because the work schedule was heavily redacted, mother’s counsel was unable to confirm father’s assertion that he was unavailable for the deposition. Father failed to appear for the deposition on September 8.

On September 16, mother moved for attorney fees based on father’s revocation of the signed medical authorizations, premature termination of the August 24 deposition, and failure to appear at the September 8 deposition. Father filed a responsive motion on September 30. In addition to responding to mother’s motion for attorney fees, father requested that the district court limit the scope and manner of any future deposition and find that mother’s counsel violated the Minnesota Rules of Civil Procedure and the Minnesota Rules of Professional Conduct.

The district court granted mother’s motion for attorney fees after a hearing on the motion. It awarded mother \$4,427 in conduct-based attorney fees and costs related to father’s medical authorizations and \$1,425 in attorney fees related to the depositions. The

district court declined to consider the new issues that father raised in his responsive motion, concluding that the motion was untimely. Father appeals.

DECISION

I.

Father challenges the district court's award of conduct-based attorney fees and costs related to his medical authorizations and depositions. Minn. Stat. § 518.14 (2020) governs awards of attorney fees in family-law cases. "Nothing in [section 518.14] . . . precludes the court from awarding, in its discretion, additional fees, costs, and disbursements against a party who unreasonably contributes to the length or expense of the proceeding." Minn. Stat. § 518.14, subd. 1. When, as here, the parties do not dispute the issue, we have assumed that this statute provides a substantive basis for a district court to award conduct-based fees. *Madden v. Madden*, 923 N.W.2d 688, 702 (Minn. App. 2019). The party moving for conduct-based attorney fees has the burden to show that the other party's conduct unreasonably contributed to the length or expense of the proceeding. *Baertsch v. Baertsch*, 886 N.W.2d 235, 238 (Minn. App. 2016).

We review an award of conduct-based attorney fees for an abuse of discretion. *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007). We review related factual findings for clear error. *Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008). A finding is clearly erroneous if we are left with the definite and firm conviction that the district court made a mistake. *Id.*

Father argues that he does not have the means to pay the court-ordered attorney fees and that mother does not need the fees because her counsel represented her pro bono. But

the district court may award conduct-based attorney fees “regardless of the recipient’s need for fees and regardless of the payor’s ability to contribute to a fee award.” *Geske v. Marcolina*, 624 N.W.2d 813, 818 (Minn. App. 2001). Therefore, father’s purported inability to pay and mother’s lack of need do not demonstrate that the district court abused its discretion.

Father also argues that he stayed in “continuous contact with all parties” throughout discovery, his communication was “immediate and timely,” and he made a “substantial effort to provide discovery.” Those assertions are conclusory, and father does not identify support for his assertions in the record. Contrary to father’s assertions, the district court found that father was unwilling “to comply with the basic rules of discovery and to follow court orders,” which resulted in mother’s attorneys “having to do legal work they otherwise would not have had to do,” and that his deliberate conduct unreasonably delayed the proceedings.

The record supports those findings. Regarding the signed medical authorizations, the district court ordered father to provide the authorizations in March 2020, but mother had to move to compel father to do so. After granting the motion, the district court declined to award attorney fees to mother, but it warned father that it may award attorney fees in the future if he continued to delay the proceedings. Shortly after providing the signed medical authorizations, father revoked them based on his unilateral assertion that mother’s counsel had had enough time to access his medical information and did not need continued access to that information. Father did not obtain permission from the district court before he revoked the authorizations, and his actions violated the district court’s previous orders.

Father notes that he signed new medical authorizations. Father's execution of new medical authorizations is immaterial. Absent the district court's permission to do otherwise, father was obligated to comply with the court's order. His unauthorized revocation of his authorizations was a refusal to do so, and, as the district court found, father's conduct caused mother's counsel to do legal work that was otherwise unnecessary.

Regarding the depositions, father attributes his failure to answer questions at the August 24 deposition to his mental-health issues and maintains that he failed to appear at the September 8 deposition because he had to work. The district court rejected father's arguments, finding that father's actions demonstrate that he will not comply with court rules and instead "will interpret the rules as he sees fit, without legal basis for his position." The court also found that father's conduct related to the depositions unnecessarily delayed the proceedings.

Once again, the record supports the district court's finding. The August 24 deposition ended early because father became upset and refused to answer deposition questions. For example, when discussing father's education, mother's counsel asked why he did not finish high school, and father accused mother's counsel of "trying to make [him] look like an idiot." Father then failed to appear for the deposition scheduled for September 8. Although father claims to have had good reasons for his actions, he did not follow the rules of civil procedure governing depositions. *See* Minn. R. Civ. P. 30.03 (providing that any objections to the evidence presented or the conduct of a party during a deposition shall be noted, "but the examination shall proceed, with the testimony being taken subject to the objections"), 30.04(a) (stating that "[a] person may instruct a deponent not to answer only

when necessary to preserve a privilege, to enforce a limitation on evidence directed by the court,” or to present a motion to suspend the deposition), 37.04 (authorizing the court to take certain action when a party fails to appear for a deposition after being served with proper notice).

In sum, the district court did not clearly err in finding that father’s actions unreasonably contributed to the length or expense of the proceeding. The resulting award of conduct-based attorney fees—which came after the district court warned father that his conduct could lead to that result—was not an abuse of discretion.

II.

Father contends that the district court erred by failing to address issues that he raised in his responsive motion. A responding party that raises new issues other than those raised in the initial motion must file and serve notice of the motion at least 14 days before the hearing. Minn. R. Gen. Prac. 303.03(a)(2). Here, the motion hearing was scheduled for October 7, 2020. Father did not file his responsive motion until September 30, just seven days before the hearing. Because father did not satisfy the notice requirements of the rules of general practice, the issues he attempted to raise in his responsive motion were not properly before the district court, and the district court did not err by declining to address those issues.

Father argues that his responsive motions did not raise new issues because his arguments related to the depositions that mother discussed in her initial motion. For instance, father argued that mother’s counsel violated the rules of civil procedure when scheduling the depositions and violated the rules of professional conduct during the August

24 deposition. To the extent that those issues overlapped with the issues mother raised in her initial motion, the district court implicitly rejected them in concluding that father was responsible for the delay in the depositions. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (stating that we do not presume error on appeal). Again, we discern no basis to reverse the district court's decision.

Affirmed.