STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0566

In re the Marriage of: Lauri Sue Browning, petitioner,
Respondent,

vs.

Daniel H. Gruenstein,
Appellant.

Filed May 20, 2019
Affirmed in part, reversed in part, and remanded
Johnson, Judge

Hennepin County District Court
File No. 27-FA-13-3117

Alan C. Eidsness, Lisa T. Spencer, Henson & Efron, P.A., Minneapolis, Minnesota (for respondent)

Kay Nord Hunt, Lommen Abdo, P.A., Minneapolis, Minnesota; and

Barbara J. Seibel, Kathleen M. Newman + Associates, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Jesson, Judge.

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

JOHNSON, Judge

Lauri Sue Browning and Daniel H. Gruenstein were married for approximately 18 years before their marriage was dissolved. In the dissolution decree, the district court

ordered Gruenstein to pay permanent spousal maintenance to Browning. After Gruenstein started a new job in Chicago and relocated there, he moved to modify the spousal-maintenance award. The district court denied the motion, reasoning that there was a substantial change in circumstances but that the change did not render the existing spousal-maintenance award unreasonable and unfair. We conclude that the district court erred in some of its findings concerning Gruenstein's income and expenses and that, in light of those erroneous findings, the district court must reconsider whether the existing spousal-maintenance obligation is unreasonable and unfair. We also conclude that the district court erred by awarding need-based attorney fees in light of our resolution of Gruenstein's arguments concerning his income and expenses. We conclude, however, that the district court did not err by awarding conduct-based attorney fees to Browning. Therefore, we affirm in part, reverse in part, and remand for further proceedings.

FACTS

Browning and Gruenstein were married in September 1997. They have four children, whose ages now are 19, 17, 15, and 12. Browning petitioned for dissolution of the marriage in April 2013. At the time of the dissolution trial in November 2014, Browning worked part-time as a nurse, and Gruenstein worked as a pediatric cardiologist. Just before the trial, Gruenstein obtained a new position of employment in Chicago, which pays a higher salary than his prior position but required him to relocate.

In April 2015, the district court filed its dissolution judgment and decree based on the findings and conclusions of a consensual special magistrate. *See* Minn. Stat. § 484.74, subd. 2a (2018); Minn. R. Gen. Prac. 114.02(a)(2). The district court awarded Browning

permanent spousal maintenance of $12,000 per month based on findings that Gruenstein's gross income in Chicago would be $32,500 per month, that his reasonable expenses in Chicago would be $9,690 per month, that Browning's gross income is $3,380 per month, and that her reasonable expenses are $12,089 per month. The district court awarded Browning sole legal custody and sole physical custody of the children but awarded Gruenstein significant parenting time. Since relocating to Chicago, Gruenstein has exercised his parenting time by traveling to Minnesota every other weekend and by caring for the children in Chicago for significant periods during the summertime. Gruenstein appealed from the dissolution decree, raising numerous issues. This court affirmed in substantial part but reversed and remanded on one issue that is not directly at issue in the present appeal. *Gruenstein v. Gruenstein*, No. A16-0083, 2016 WL 4263161, at *10 (Minn. App. Aug. 15, 2015), *review denied* (Minn. Oct. 26, 2016). In June 2016, while the appeal was pending, Browning suffered a stroke. She presently is not working but receives long-term disability payments.

In December 2016, Gruenstein moved to modify, among other things, the amount of the award of permanent spousal maintenance. He argued to the district court that the amount of permanent spousal maintenance should be reduced because his reasonable monthly expenses are greater than the amount found by the consensual special magistrate and because Browning's reasonable expenses had decreased while her income had increased. Both parties submitted memoranda of law as well as affidavits and exhibits in support of their respective positions. While Gruenstein's modification motion was

pending, Browning moved for need-based and conduct-based attorney fees, and Gruenstein moved for conduct-based attorney fees.

The district court held a hearing in July 2017 at which counsel presented oral arguments. In October 2017, the district court filed an order in which it denied Gruenstein's motion to modify spousal maintenance. In the same order, the district court granted Browning's motion for conduct-based attorney fees in the amount of $16,453, granted Browning's motion for need-based attorney fees "in an amount to be determined," and denied Gruenstein's motion for conduct-based attorney fees.

In December 2017, Gruenstein moved for amended findings with respect to the award of need-based attorney fees. He argued that the district court had erroneously included his retirement accounts and his home equity in its consideration of his ability to pay Browning's attorney fees. In February 2018, the district court granted Gruenstein's motion in part and amended certain findings but determined that he still has the means to pay Browning's attorney fees based on his monthly surplus. Accordingly, the district court awarded Browning $23,270 in need-based attorney fees. The district court administrator entered judgment in April 2018. Gruenstein appeals.

D E C I S I O N

I. Motion to Modify Spousal Maintenance

Gruenstein first argues that the district court erred by denying his motion to modify the amount of the award of permanent spousal maintenance.

A district court may modify an award of spousal maintenance if a party makes a showing of a substantial change in circumstances that makes the existing award

"unreasonable and unfair." Minn. Stat. § 518A.39, subd. 2(a), (b) (2018); *see also Hecker v. Hecker*, 568 N.W.2d 705, 709 (Minn. 1997). A substantial change in circumstances may be based on, among other things, "substantially increased or decreased gross income of an obligor or obligee" or "substantially increased or decreased need of an obligor or obligee." Minn. Stat. § 518A.39, subd. 2(a)(1), (2). If there is a substantial change in circumstances that makes the existing award unreasonable and unfair, the district court must determine the amount and duration of the modified spousal-maintenance award by applying all relevant factors, including the statutory factors that apply to an initial award of spousal maintenance, as they "exist at the time of the [modification] motion." *Id.*, subd. 2(e) (citing Minn. Stat. § 518.552 (2018)); *see also Lee v. Lee*, 775 N.W.2d 631, 635-36 (Minn. 2009); *Madden v. Madden*, 923 N.W.2d 688, 696 (Minn. App. 2019).

This court generally applies an abuse-of-discretion standard of review to a district court's decision on a motion to modify spousal maintenance. *Hecker*, 568 N.W.2d at 709-10. A district court abuses its discretion in making such a decision if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). To the extent that a modification decision depends on findings of fact, we apply a clear-error standard of review to those findings of fact. *Bissell v. Bissell*, 191 N.W.2d 425, 427 (Minn. 1971); *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn. App. 1992).

The district court determined that, although Gruenstein demonstrated a substantial change in circumstances, he did not show that the change made the original spousal

maintenance award unreasonable and unfair. Gruenstein contends that the district court erred in multiple ways. We consider each in turn.

A. Gruenstein's Income

Gruenstein first argues that the district court erred in its finding of his annual income by including $24,608 of earnings from his work as a consultant in 2016.

In analyzing an issue of spousal maintenance, a district court must refer to section 518A.29 of the Minnesota Statutes for the definition of gross income. *Lee*, 775 N.W.2d at 635 n.5. Gross income is defined there to mean

> any form of periodic payment to an individual, including, but not limited to, salaries, wages, commissions, self-employment income under section 518A.30, workers' compensation, unemployment benefits, annuity payments, military and naval retirement, pension and disability payments, spousal maintenance received under a previous order or the current proceeding, Social Security or veterans benefits provided for a joint child under section 518A.31, and potential income under section 518A.32.

Minn. Stat. § 518A.29(a) (2018). In this context, a payment is "periodic" if it is "marked by repeated cycles" or "happening or appearing at regular intervals." *Haefele v. Haefele*, 837 N.W.2d 703, 710 (Minn. 2013) (quoting *American Heritage Dictionary of the English Language* 1307 (4th ed. 2004)).

When he filed his motion to modify, Gruenstein's salary was $397,800 per year (or $33,150 per month), which is $650 more per month than his starting salary in that position. His income tax records show that he also earned $24,608 from consulting in 2016. The district court found that his monthly gross income had increased by $2,700 since the

dissolution trial, which indicates that the district court accounted for both his increased salary and $2,051 per month in consulting work.

Gruenstein contends that the district court erred by including $2,051 of consulting earnings in its finding of his monthly gross income on the ground that the consulting he performed in 2016 "is not subject to repetition" and "not a dependable source of income." Gruenstein stated in an affidavit in July 2017 that his consulting work "is voluntary work that I absolutely cannot rely on or predict, nor is it a condition of my employment" and that "it has already become apparent that many of these opportunities have ended, or will end this calendar year." Browning responds by noting that Gruenstein earned $9,000 as a consultant in the first half of 2017, which might suggest that his consulting work is ongoing. But that evidence is not necessarily inconsistent with Gruenstein's July 2017 affidavit, which states that he did not foresee a significant amount of future consulting work.

The inquiry is focused on whether Gruenstein's consulting earnings are "marked by repeated cycles" or "happening or appearing at regular intervals." *See id*. The evidence in the record on that issue is limited. Gruenstein's 2016 tax records show only an annual total. No evidence reveals the number of payments or their timing or their individual amounts, and there is no evidence concerning the source or sources of Gruenstein's consulting work. To be sure, a salaried person might perform consulting work in such a way that the consulting income satisfies the definition of periodic payments. But in this particular case, the evidence necessary for such a finding is lacking.

Thus, the district court erred by including $2,051 per month (or $24,608 per year) of consulting work in its finding of Gruenstein's gross annual income.

B. Gruenstein's Expenses

Gruenstein next argues that the district court erred by finding that his reasonable monthly expenses are $12,463. With his motion to modify, he submitted evidence that his monthly expenses are not $9,690, as found in the dissolution decree, but $18,127. The district court reduced or struck entirely several categories of Gruenstein's claimed expenses. Gruenstein argues on appeal that the district court erred with respect to six categories of expenses.

1. Minnesota Home. Gruenstein submitted evidence that he spends $3,599 per month on mortgage payments for the home that he maintains in Minnesota, which was the marital home and is where he stays with the parties' children two weekends per month. The district court reduced that expense to $1,599. Gruenstein contends that the expense is reasonable because he utilizes the marital home when exercising his parenting time. In general, a district court should set spousal maintenance at an amount that "allow[s] the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as equitable under the circumstances." *See Peterka v. Peterka*, 675 N.W.2d 353, 358 (Minn. App. 2004). Gruenstein's circumstances have changed in that he has relocated to another state, albeit a nearby and accessible state and for a higher income. Sometimes the marital standard of living is unavoidably diluted by the need for multiple households, in which case compromises may be necessary. *See Gruenstein v. Gruenstein*, No. A16-0083, 2016 WL 4263161, at *7 (citing *Maiers v. Maiers*, 775 N.W.2d 666, 670

(Minn. App. 2009) (citing *Nardini v. Nardini*, 414 N.W.2d 184, 198 (Minn. 1987))). The implication of the district court's order is that Gruenstein should spend less money on a home that he uses only two weekends per month or should consider alternatives to a home, such as hotel rooms. The district court did not err by determining that, given the parties' circumstances, $1,599 is a reasonable amount of expenses for a Minnesota home that Gruenstein uses only two weekends per month when he exercises his parenting time.

2. Travel Between Chicago and Minnesota. Gruenstein claimed that he spends $1,216 per month traveling between Chicago and Minneapolis to exercise his parenting time. The district court reduced this expense item to $427. The district court explained that it was "difficult to determine reasonable monthly amounts" for Gruenstein's travel expenses because he had "done little to make these expenses clear to the court and ha[d] instead submitted copious amounts of bank statements." Gruenstein contends that his year-end credit-card summaries for 2015 and 2016 show that he spent an average of $1,154 per month on transportation. But Gruenstein's credit-card summaries do not distinguish between travel between Chicago and Minnesota for purposes of parenting time and travel to other places for other purposes. Accordingly, Gruenstein's evidence does not clearly show that he actually incurs $1,216 in monthly expenses for this purpose. The district court did not err by setting Gruenstein's monthly parenting-time-related travel expenses at $427.

3. Family Dog. Gruenstein submitted evidence that he spends $1,145 per month on boarding the family dog. The district court reduced the expense item to $300, stating that $1,145 is "far too high." Gruenstein contends that the district court's reduction of this expense is unfair because Browning chose to acquire the dog and forced him to take the

dog upon their separation because her townhome would not allow dogs. He also contends that, because of his work schedule, the dog must be dropped off at a kennel 20 days per month, which costs $700, and must be boarded around the clock six days each month when he is in Minnesota exercising his parenting time, which costs $330. The district court did not address Gruenstein's argument that Browning, not he, should be responsible for the dog-related expenses based on her decision to acquire the dog and her choice of a residence where the dog is not allowed. The district court also did not identify an alternative means of caring for the dog at a lesser expense. It appears as if the district court overlooked a portion of Browning's affidavit in which she states that she has "found a home for the dog in Minnesota where he will be well cared for, and the children can see him whenever they want" and that "[t]his expense should be removed from [Gruenstein's] budget." In light of that evidence, it is puzzling why the dog remains at Gruenstein's house in Chicago. It seems that the arrangement described in Browning's affidavit would be beneficial to all concerned in that it would allow the children to enjoy the dog regularly throughout the year and, in addition, would reduce the financial burden on the parties. Accordingly, the district court erred by finding that the dog-related expenses incurred by Gruenstein are not reasonable. On remand, the district court shall expressly consider whether the dog should be in Minnesota and which party should be held responsible for dog-related expenses. If the district court determines that the dog should remain at Gruenstein's house in Chicago, the district court shall find that the dog-related expenses described by Gruenstein's evidence are reasonable expenses.

4. Parking in Chicago. Gruenstein claimed that he spends $350 per month on contract parking at his workplace in Chicago. The district court reduced this expense item to $150 on the ground that Gruenstein "has provided no proof of payment." Gruenstein contends that this reduction is erroneous because parking is necessary for his work. We see no documentary evidence in the record to support Gruenstein's claim that he spends $350 per month on parking at his workplace. In light of the lack of such evidence, the district court did not clearly err by reducing this expense item.

5. Vacation. Gruenstein claimed that he spends $200 per month on vacations. The district court reduced this expense item to $100. Gruenstein contends that the district court erred because it approved of Browning's vacation expenses of $200 per month and because there is no reason to treat him differently. We agree. Because the district court did not explain why it allowed a lesser amount of vacation expenses for Gruenstein than for Browning, the district court erred. *See Rask v. Rask*, 445 N.W.2d 849, 854 (Minn. App. 1989)

6. Online Reputation Management Service. Gruenstein submitted evidence that he spends $363 per month on an online reputation management service, which monitors the internet to identify and remove negative or false posts about him. The district court eliminated the expense item. Gruenstein contends that the expense is necessary because Browning (or a person associated with her) has made statements online that have damaged or threatened to damage his professional reputation, which poses a risk to his future income capacity. The district court, however, stated that Gruenstein did not prove that Browning

was responsible for negative online posts, a finding that Gruenstein does not challenge. The district court did not err by eliminating this unusual expense item.

Thus, the district court erred by reducing Gruenstein's claimed monthly expenses by $845 with respect to the family dog and by $100 with respect to vacations, but the district court did not err with respect to the other expense items challenged by Gruenstein.

C. Browning's Income

Gruenstein next argues that the district court erred by finding that Browning is permanently disabled and that her gross income consists only of her monthly disability payments, without allowing him to conduct discovery on the issue.

In determining whether a substantial change in circumstances has occurred, a district court may consider whether there is a "substantially increased or decreased gross income of an obligor or obligee." Minn. Stat. § 518A.39, subd. 2(a)(1). The district court must determine each party's gross income at the time of the modification proceedings. *See id.*; *Phillips v. Phillips*, 472 N.W.2d 677, 681 (Minn. App. 1991); *Neubauer v. Neubauer*, 433 N.W.2d 456, 459-60 (Minn. App. 1988), *review denied* (Minn. Mar. 17, 1989).

In this case, Gruenstein sought to prove that Browning's income had substantially increased. The district court found that, at the time of the modification proceedings, Browning was receiving long-term disability payments of $2,778 per month and no other income. This was less than her monthly income of $3,380 at the time of the dissolution trial. On appeal, Gruenstein contends that the district court should have imputed or attributed to her the income that she was earning at the time of the dissolution. But even if the district court had done so, Gruenstein could not have satisfied the threshold requirement

of a substantial change in circumstances based on Browning's income because he would have merely shown that her income had remained constant. *See* Minn. Stat. § 518A.39, subd. 2(a)(1).

Gruenstein also contends that the district court erred by finding that Browning "has become permanently disabled." For purposes of Gruenstein's modification motion, it was necessary for the district court to determine whether, at that time, Browning's income had substantially increased since the dissolution. *See id.* It was unnecessary for the district court to make a finding concerning her future earning capacity. *See id.* We do not construe the district court's "permanently disabled" statement to preclude future fact-finding concerning her income or potential income if that issue were to become relevant.

Gruenstein also contends that the district court erred by not allowing him to conduct discovery into Browning's present ability to earn income through employment. Browning responds by contending that Gruenstein did not move to compel discovery. It appears that the district court prevented Gruenstein from deposing Browning following a rule 16 conference. Regardless, the amount of Browning's present income is not relevant in light of the district court's determination that her income has not substantially increased. Her present income would be relevant only if there were another basis for a substantial change in circumstances causing the existing spousal-maintenance award to be unreasonable and unfair. If that scenario were to arise on remand, the district court would need to consider all factors relevant to the amount and duration of spousal maintenance. *See* Minn. Stat. § 518A.39, subd. 2(e) (citing Minn. Stat. § 518.552). Included among those factors are "the financial resources of the party seeking maintenance, including . . . the party's ability

to meet needs independently" and "the physical and emotional condition of the spouse seeking maintenance." Minn. Stat. § 518.552, subd. 2(a), (f).

The record supports the district court's finding concerning Browning's income. Browning submitted evidence of the amount of her long-term disability payments and a letter from her neurologist stating that her recovery from the stroke is ongoing. In light of the district court's determination that Gruenstein did not satisfy his burden of showing that a substantial change in circumstances made the existing spousal-maintenance award unreasonable and unfair, it was unnecessary for the district court to consider Browning's ability to become fully or partially self-supporting.

Thus, although the district court had no need to state that Browning "has become permanently disabled," the district court did not err by finding that Browning's gross income presently is equal to the amount of her disability payments.

D. Browning's Expenses

Gruenstein also argues that the district court erred by finding that Browning's reasonable monthly expenses are $12,356. Gruenstein argues that the district court should not have approved of two expense categories.

1. Child-related Expenses. The district court's finding of Browning's reasonable monthly expenses includes $3,776 in expenses that are child-related. Gruenstein contends that these expenses should not have been included on the ground that the purpose of child support is to pay child-related expenses while the purpose of spousal maintenance is to provide for the needs of a former spouse. Browning contends in response that Gruenstein did not preserve this argument by presenting it to the district court. We agree.

Accordingly, we will not consider it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Doe 175 v. Columbia Heights Sch. Dist.*, 842 N.W.2d 38, 42 (Minn. App. 2014).

2. Leased Car. The district court's finding of Browning's reasonable monthly expenses includes $400 for a leased car. In the district court, Gruenstein contended that Browning does not actually incur this expense because she owns the car that she previously leased. The district court was aware that Browning owns the car but allowed the expense item because her car was 14 years old and she intended to lease a newer car in the near future. The district court expressly stated that it was making a similar provision for Gruenstein, whose car had 200,000 miles, and the district court set his monthly lease payment at $400. Gruenstein cannot complain of an alleged error that affects both parties' monthly expenses equally.

Thus, the district court did not err in its findings of Browning's reasonable monthly expenses.

E. Summary

Gruenstein argues that the district court erred by concluding that he has a monthly surplus of $1,948 after taxes. He argues that, in light of the foregoing issues, he actually has a monthly deficit. Our resolution of Gruenstein's arguments concerning his income and expenses necessarily changes the calculation of his surplus or deficit. We have concluded in part I.A. that the district court overstated Gruenstein's income by $2,051 per month, and we have concluded in parts I.B.3. and I.B.5. that the district court understated Gruenstein's reasonable expenses by $845 (subject to further consideration on remand) and

$100 per month. As a result, Gruenstein has a monthly deficit. On remand, the district court shall reconsider whether the existing spousal-maintenance obligation is unreasonable and unfair and, if so, shall consider modifying the award.

II. Attorney Fees

Gruenstein argues that the district court erred by awarding Browning both need-based and conduct-based attorney fees.

A. Need-Based Attorney Fees

Gruenstein first argues that the district court erred by awarding need-based attorney fees to Browning because, he asserts, he lacks the means to pay them.

In a proceeding under chapter 518 or chapter 518A of the Minnesota Statutes, the district court "shall award attorney fees, costs, and disbursements in an amount necessary to enable a party to carry on or contest the proceeding" if it finds:

> (1) that the fees are necessary for the good faith assertion of the party's rights in the proceeding and will not contribute unnecessarily to the length and expense of the proceeding;
>
> (2) that the party from whom fees, costs, and disbursements are sought has the means to pay them; and
>
> (3) that the party to whom fees, costs, and disbursements are awarded does not have the means to pay them.

Minn. Stat. § 518.14, subd. 1 (2018). A finding that the three requirements are satisfied "requires the court to award attorney fees." *Holmberg v. Holmberg*, 588 N.W.2d 720, 727 (Minn. 1999). This court applies an abuse-of-discretion standard of review to a district

court's determination as to whether the three requirements are satisfied. *Gully v. Gully*, 599 N.W.2d 814, 825 (Minn. 1999).

Gruenstein challenges the district court's finding that the second requirement is satisfied, asserting that he lacks the means to pay Browning's attorney fees. He reiterates the argument he presented to the district court in his motion for amended findings. In ruling on that motion, the district court amended its findings with respect to the assets of Gruenstein that are available for the payment of Browning's attorney fees. After setting aside Gruenstein's retirement accounts, the district court found that Gruenstein has a total of $109,392 in available assets, with $2,392 in his checking account and $107,000 in home equity. But the district court also noted that those assets are less than Gruenstein's liabilities of $111,231. Accordingly, the district court concluded that Gruenstein does not have the means to pay Browning's attorney fees based on his assets. But the district court nonetheless granted Browning's motion for need-based fees on the ground that Gruenstein "runs a monthly cash flow surplus of $1,948, which can be used to pay [Browning's] need-based attorney fees."

Again, our resolution of Gruenstein's arguments concerning his income and expenses necessarily changes the calculation of his surplus or deficit. We have concluded in part I.A. that the district court overstated Gruenstein's income by $2,051 per month, and we have concluded in parts I.B.3. and I.B.5. that the district court understated Gruenstein's reasonable expenses by $845 (subject to further consideration on remand) and $100 per month. As a result, Gruenstein has a monthly deficit. In light of that monthly deficit, Gruenstein does not have the means to pay Browning's attorney fees.

Thus, the district court erred by granting Browning's motion for need-based attorney fees.

B. Conduct-Based Attorney Fees

Gruenstein also argues that the district court erred by awarding Browning conduct-based attorney fees based on her efforts to collect a judgment debt owed by Gruenstein.

The statute quoted above in our discussion of need-based attorney fees also provides, "Nothing in this section or section 518A.735 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. This court has relied on this language as a legal basis for an award of "conduct-based" attorney fees. *See, e.g.*, *Madden*, 923 N.W.2d at 702; *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).

Gruenstein contends, in part, that section 518.14, subdivision 1, does not provide a substantive basis for awarding conduct-based attorney fees. Gruenstein bases this argument on the supreme court's recent order in *Anderson v. Anderson*, No. A16-2006 (Minn. Aug. 6, 2018), in which the court acknowledged that it has "never squarely held . . . that section 518.14 provides a substantive basis for conduct-based fees on appeal." *Id.* at 2. A dissent cast further doubt on the issue by stating, "The plain language of section 518.14 does not authorize the award of attorney fees for anything other than need-based fees." *Id.* at D-1 (Gildea, C.J., dissenting). In response, Browning argues that Gruenstein did not preserve this argument by presenting it to the district court. We agree. Accordingly, we

will not consider the issue for the first time on appeal. *See Thiele*, 425 N.W.2d at 582; *Doe 175*, 842 N.W.2d at 42.

Gruenstein also contends that section 518.14, subdivision 1, does not allow an award of attorney fees for efforts to collect a judgment debt. He asserts that the district court erred by relying on this court's decision in *Brodsky v. Brodsky*, 733 N.W.2d 471, 476 (Minn. App. 2007). In that case, we considered whether a party may recover conduct-based attorney fees that were incurred in a proceeding ancillary to a dissolution proceeding. 733 N.W.2d at 475-78. We held that a party may do so if three criteria are satisfied:

> (1) the ancillary proceeding must be sufficiently related to the marital dissolution to be more than merely coincidental; (2) the fees in the ancillary proceeding must be necessary to protect some interest awarded to the fee-seeking party in the dissolution; and (3) the potential obligor's conduct in the ancillary proceeding must be conduct that, if it occurred in the dissolution, would satisfy the requirements for a conduct-based fee award under Minn. Stat. § 518.14, subd. 1.

Id. at 477. Gruenstein asserts, "The *Brodsky* rationale cannot be applied to this case and to do so would make every collection case following a dissolution judgment and decree a basis to award conduct-based fees." But Gruenstein does not attempt to explain why the *Brodsky* rule does not apply in this case. We believe that the rule is stated broadly enough to encompass the present circumstances.

Gruenstein also contends that *Brodsky* was wrongly decided. Regardless, a published opinion of the court of appeals is precedential and binds the court of appeals and district courts in subsequent cases. *See* Minn. R. Civ. App. P. 136.01, subd. 1; *State v. Peter*, 825 N.W.2d 126, 129 (Minn. App. 2012), *review denied* (Minn. Feb. 27, 2013);

State v. M.L.A., 785 N.W.2d 763, 767 (Minn. App. 2010), *review denied* (Minn. Sept. 21, 2010). These opinions are based on the fundamental principle of *stare decisis*, or "*stare decisis et non quieta movere*," which means, "[t]o stand by things decided, and not to disturb settled points." *Black's Law Dictionary* 1626-27 (10th ed. 2014).

Thus, the district court did not err by granting Browning's motion for conduct-based attorney fees.

Affirmed in part, reversed in part, and remanded.