STATE OF MINNESOTA
IN COURT OF APPEALS
A11-558

Aaron Olson, petitioner,
Appellant,

vs.

Randall LaBrie,
Respondent.

Filed February 13, 2012
Affirmed
Hudson, Judge

Chisago County District Court
File No. 13-CV-10-1237

Aaron Olson, Chisago City, Minnesota (pro se appellant)

Beverly K. Dodge, William D. Siegel, Barna, Guzy & Steffen, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and Ross, Judge.

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

HUDSON, Judge

Appellant challenges the district court's dismissal of his petition for a harassment restraining order, asserting that respondent violated appellant's privacy by posting photos that included appellant and related comments on Facebook. Appellant also argues that he

did not receive a fair hearing. Because the district court did not abuse its discretion in dismissing appellant's petition and appellant received a fair hearing, we affirm.

FACTS

In October 2010, pro se appellant Aaron Olson petitioned for a harassment restraining order (HRO) against his uncle, respondent Randall LaBrie. Appellant claimed that family photos and accompanying text, posted by respondent to the social-networking web site Facebook, constituted harassment under Minn. Stat. § 609.748 (2010). The district court denied appellant's petition for an HRO.

From March to June 2010, respondent posted multiple photos of various family members on his Facebook page. The photos include portraits and group shots, such as several family members when they were children, including appellant, posing in front of a Christmas tree. When appellant learned these photos had been posted, he e-mailed respondent and requested the photos that included him either be removed or altered to erase appellant. In reply, respondent stated in an e-mail that he would not alter the photos and that appellant should stay off Facebook if he disliked the photos. Ultimately, respondent removed the "tags" that identify people in photos on Facebook and later took down the photos.

Respondent testified that appellant was not his "friend" on Facebook and that he intended his Facebook page to be viewed only by friends and not by appellant. Respondent claims that appellant had "unauthorized" access to his Facebook page, but respondent also testified that any member of the public could have accessed his page via a simple name search. Appellant, who lives with his mother, A.O., testified that he

initially accessed respondent's Facebook page via his mother's Facebook account when he used her computer and she had left her Facebook page open. But appellant stated in his appellate brief that he later obtained copies of respondent's Facebook page for the HRO hearing by conducting a search on Facebook that any member of the public could have done.

In his HRO petition, appellant claimed that statements from respondent included "a series of comments that could reasonably be interpreted as veiled threats against the Petitioner's life and safety." Appellant also claimed that respondent frightened appellant with threatening behavior that included "a hostile tirade against Petitioner online, posting childhood images of Petitioner accompanied by obscene language." Appellant further stated in the petition that respondent "has acquired private childhood pictures of Petitioner and has posted the pictures online together with vulgar and coercive statements." Finally, appellant stated that respondent's harassment of him had restricted his movement "and caused reasonable alarm." Appellant requested a two-year order requiring respondent to not harass appellant or his minor child, to stay away from his home, and to remain 100 yards away from him and his children.

The district court held an evidentiary hearing and, after appellant submitted his evidence, granted respondent's motion to dismiss appellant's petition. The district court determined that appellant had not proved harassment and instead provided evidence only of "mean, disrespectful comments." In addition, the district court stated that the photos provided as evidence of harassment were "innocuous family photographs and could not possibly serve as a basis for harassment."

This appeal follows.

D E C I S I O N

I

A district court's decision to grant or deny a petition for an HRO is reviewed for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). The district court's finding of facts will be set aside only if clearly erroneous. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). Whether the facts found by the district court satisfy the definition of harassment is a question of law, which is reviewed de novo. *Peterson*, 755 N.W.2d at 761.

Appellant argues that photos depicting him and comments regarding him that respondent posted on Facebook violated his privacy under Minn. Stat. § 609.748, subd. 1(1)[1] and therefore constitute harassment. A district court may grant an HRO when it finds reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(a)(3). Harassment includes

> a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target[.]

[1] Appellant cites to Minn. Stat. § 608.748 throughout his brief. We presume this is in error and that appellant instead intended to cite to Minn. Stat. § 609.748, the HRO statute.

Id. at subd. 1(a)(1).

Though privacy concerns are the thrust of appellant's arguments on appeal, it does not appear from the record that he raised the issue of privacy below. In appellant's HRO petition, when asked to describe the effect of the alleged harassment on his safety, security, or privacy, appellant simply states that "[t]he harassment has restricted movement and caused reasonable harm." Claims related to the restriction of movement and harm apply to the statutory requirements of safety or security, not privacy. The district court also did not address any privacy concerns in its dismissal of appellant's petition. The court of appeals generally does not review issues not raised below and issues not decided by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Therefore, we conclude that appellant waived his privacy argument.

Even if this court reached the merits of appellant's argument, the argument would fail. Appellant appears to argue that satisfaction of the HRO statute should be determined using the tort privacy principles recognized in *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998). In *Lake*, the Minnesota Supreme Court recognized three torts constituting invasion of privacy: intrusion upon seclusion, appropriation, and publication of private facts. *Id.* at 235. The court declined to recognize the tort of false light publicity. *Id.* Here, appellant appears to argue that the torts of appropriation and publication of private facts satisfy the privacy element of the HRO statute. Appellant also asks the court to apply false-light publicity in its review of his HRO petition, though he acknowledges this tort is not recognized in Minnesota. A tort cause of action is

distinct from a petition for an HRO, which is governed by Minn. Stat. § 609.748. Harassment is defined in the statute, providing no need to look beyond the statute to tort caselaw to define harassment.

Additionally, appellant contends that the district court erred by not fully crediting the testimony of A.O., appellant's mother, who testified that respondent's conduct was "offensive." In determining that appellant had not proved harassment, the district court stated that it had heard all of the testimony and reviewed the exhibits containing the Facebook photos and comments. Additionally, the district court specifically referenced A.O.'s testimony and her assessment of the comments posted by respondent to Facebook. The district court stated that A.O. provided an adequate description of the comments as "mean, disrespectful comments," which did not rise to the level of harassment. Including "offensive" in the assessment of A.O.'s testimony would not have changed the district court's assessment of the comments as mean and disrespectful but not harassing. The district court also found that the family Christmas pictures were innocuous photos that "could not possibly serve as a basis for harassment," a finding that appellant does not contest. To constitute harassment, words must have a substantial adverse effect on the safety, security, or privacy of another. Minn. Stat. § 609.748, subd. 1(a)(1). Comments that are mean and disrespectful, coupled with innocuous family photos, do not affect a person's safety, security, or privacy—and certainly not substantially so. The district court did not err by determining that the evidence submitted by appellant did not satisfy the statutory definition of harassment. Therefore, the district court did not abuse its discretion by dismissing appellant's petition for an HRO.

II

Appellant also argues that he did not receive a fair hearing because of district court bias due to appellant's socioeconomic status and religious beliefs. Review of an allegation of judicial bias begins with "the presumption that a judge has discharged his or her judicial duties properly." *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

Appellant raises multiple accusations of bias against the district court and opposing counsel that span six pages of his brief without one citation to a statute or caselaw. Appellate courts decline to reach an issue in the absence of adequate briefing, including allegations unsupported by legal analysis and citation. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997); *Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994). Additionally, appellant raises his prejudice argument for the first time on appeal. The court of appeals generally does not review issues not raised below. *Thiele*, 425 N.W.2d at 582. Accordingly, we conclude that appellant waived his bias arguments.

In any event, the district court is afforded broad discretion in controlling the courtroom as part of its duty to proceed efficiently. *Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995). And our review of the record reveals that the district court, in fact, assisted appellant multiple times regarding how to approach a witness with an exhibit, how to enter an exhibit into evidence, and how to properly question a witness. The record further demonstrates that any pressure appellant faced to finish his examinations or testimony came from the district court's instruction

and attempts to control the proceeding in an efficient manner. The district court judge was not biased and appellant received a fair hearing.

Finally, appellant requests that the record on appeal be sealed. "Every party to an appeal must take reasonable steps to prevent the disclosure of confidential information, both in oral argument and written submissions filed with the court." Minn. R. Civ. App. P. 112.03. Confidential evidentiary materials should be submitted to the court of appeals in a bound confidential appendix under seal, and a party need not seek leave of court to do so. *See* Minn. R. Civ. App. P. 112.02; *see also In re Jarvis*, 433 N.W.2d 120, 124 (Minn. App. 1988). Appellant pointed to no specific information in the record that should remain confidential and instead asks the court to seal "this case." But an appellate brief cannot be filed completely under seal and "must be accessible to the public in some form." *Coursolle v. EMC Ins. Grp., Inc.*, 794 N.W.2d 652, 655 n.1 (Minn. App. 2011), *review denied* (Minn. Apr. 19, 2011). Under the rules of appellate procedure, a party wishing to protect confidential information may seek to file a redacted version that can be accessed by the public and a non-redacted version under seal if the inability to discuss confidential information would cause "substantial hardship or prevent the fair presentation of a party's argument." Minn. R. Civ. App. P. 112.03, advisory comm. cmt. Appellant argues that the case should be sealed because not doing so "will perpetuate the false light effect that Respondent likely intended for it, as well as disclose more of Appellant's private life." Appellant does not argue that disclosure of information in the briefs will cause a substantial hardship and it does not appear that disclosure will lead to substantial hardship, particularly given that the district court found the evidence

presented by appellant to not constitute harassment. Therefore, we deny appellant's request to seal any portion of the appellate record.

Affirmed.