STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2001

Denise Weidner, o/b/o Autumn Hanson, petitioner,
Appellant,

vs.

Jeffrey Dean Hurt, o/b/o Jordan Dean Hurt,
Respondent.

Filed September 30, 2008
Affirmed
Larkin, Judge

Renville County District Court
File No. 65-CV-07-97

Denise Jo Weidner, 320 N.W. Third St., P.O. Box 89, Renville, MN 56284 (pro se appellant)

Jeffrey Dean Hurt, 1420 Pebble Beach Road, Mitchell, SD 57301 (pro se respondent).

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and Larkin, Judge.

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

LARKIN, Judge

Pro-se appellant-mother Denise Weidner (mother) and Eric Hanson (father) have a daughter, born August 1, 1998, who is in mother's physical custody. Father is married to Jennifer Hanson (wife) who has a son, born September 29, 1992, from her prior

relationship with Jeffrey Hurt. Hurt has physical custody of son. Mother appeals the dismissal of a harassment restraining order (HRO) proceeding that mother filed on behalf of daughter, against Hurt on behalf of son. Mother's request for an HRO was based on allegations that son abused daughter. Hurt was served notice of the HRO proceeding, but did not appear or otherwise represent son. Mother did not name wife in the HRO petition. The district court dismissed the HRO proceeding after the court conducted an evidentiary hearing on August 14, 2007, pursuant to wife's request. Respondent did not file a brief in this appeal. This court issued an order under Minn. R. Civ. App. P. 142.03, stating that the case would be decided by the panel on the merits. We affirm.

ANALYSIS

This court reviews the dismissal of an HRO proceeding for an abuse of the district court's discretion. *See Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004) (stating that on appeal, a district court's grant of an HRO will not be reversed on appeal unless the district court abused its discretion). Also, "[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules." *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

I.

The crux of mother's challenge to the dismissal of the HRO proceeding is that the dismissal resulted from a hearing requested by wife, and that wife was not a party to the HRO proceeding and should not have been allowed to participate in the proceeding. While the record does not explain how wife received notice of the proceeding, when, as

here, the respondent in an HRO proceeding is a juvenile, the court, "whenever possible," is required to serve notice of the proceeding on "any parent or guardian of the juvenile respondent who is not the petitioner." Minn. Stat. § 609.748, subd. 3(c) (2006); *see* Minn. Stat. § 609.748, subd. 4(b) (2006) (reciting the same requirement for temporary HROs). Because wife is son's parent, if "possible," wife was to be served notice of the HRO proceeding. Any error in the record's failure to document when or how mother received notice is harmless. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

After receiving notice of the proceeding, wife requested an evidentiary hearing, and the district court granted her request. The district court dismissed the proceeding at the conclusion of the hearing, ruling that the allegations in the petition were "not proven." Because son is a minor respondent whose interests were otherwise unrepresented, we reject mother's assertion that the district court erred by holding the hearing based on wife's request.

If a party to a civil action is an infant who has a duly-appointed representative, that representative may defend on behalf of the infant. Minn. R. Civ. P. 17.02. But if no representative is appointed for the infant, the infant "shall" be represented by a guardian ad litem "appointed by the court in which the action is pending," and the guardian ad litem "shall be a resident of this state." *Id.* Legally, son is an infant. *See Black's Law Dictionary* at 781 (7th ed. 1999) (defining "infant" to include a minor); *cf.* Minn. Stat. § 645.45 (2006) (defining a "minor" as "an individual under the age of 18 years"). Accordingly, the district court was required to appoint a guardian ad litem to represent

son in the HRO proceeding. Minn. R. Civ. P. 17.02. While the district court did not formally appoint wife as the guardian ad litem, wife functionally served that purpose. And, while wife informed the district court that she requested the hearing because the court's ex parte order in the matter negatively impacted wife's parenting time with son, the sole focus of the contested evidentiary hearing was the truth of the allegations in the HRO petition asserting that son abused daughter. Wife merely defended the allegations in the HRO petition on behalf of son, who was otherwise unrepresented. Under these circumstances, the district court committed no error in holding the hearing requested by wife. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that the district court will not be reversed if it reached the right result for the wrong reason).

II.

Mother also makes a series of other arguments challenging aspects of the dismissal of the HRO proceeding.

A. Credibility Questions

Mother makes a series of arguments challenging the dismissal of the HRO proceeding based wholly or partially on her contention that the district court should have found her evidence of son's alleged conduct to be credible and persuasive. But appellate courts defer to district court credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) (stating appellate courts defer to the district court's resolution of factual issues presented by conflicting affidavits)); *DeSutter v. Township of Helena*, 489 N.W.2d 236, 240 (Minn. App. 1992) (stating the weight and credibility of testimony "was for the trier

of fact to determine"), *review denied* (Minn. Sept. 30, 1992). Therefore, we will not alter the district court's assessment of the credibility of the witnesses and the weight to be given their evidence.

B. Transcript

Mother alleges that the transcript is inaccurate. But she did not move the district court to correct or modify the record on appeal under Minn. R. Civ. App. P. 110.05. Nor is a motion to correct the transcript properly before this court if it was not previously made to the district court. *Doty v. Doty*, 533 N.W.2d 72, 75 (Minn. App. 1995).

C. Subpoena

Mother challenges the district court's refusal to issue a subpoena to have the officer who interviewed daughter about the events in question, Officer Nyla Negen, testify at the hearing. But because the district court received Officer Negen's written report regarding the interview at the hearing, even if refusing to issue the subpoena was an error, mother failed to show any resulting prejudice, and reversal is therefore not required. *See Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975) (stating that an appellant must show both error and prejudice to obtain reversal).

D. Due Process

Mother seems to argue that she was deprived of due process of law because, at the hearing, she did not know who the witnesses would be or what issues would be addressed. *See In re Welfare of Raino*, 255 N.W.2d 398, 400 (Minn. 1977) (stating that the basic requirements of procedural due process are notice and a reasonable opportunity

to be heard). While there was discussion at the beginning of the hearing regarding the potential conflict between the terms of the court's ex parte order that prohibit contact between son and daughter, and the terms of a separate order that delineate wife's parenting time rights to son, the district court's stated purpose was to "reach some consensus," which would avoid son and daughter having contact. The district court described this discussion as an attempt to find "a possible middle ground, where we don't have to go into the facts of the incident." When it became apparent that consensus was not possible, the court placed mother and wife under oath and heard testimony regarding the allegations in the HRO petition. In the end, the *only* thing the district court's order did was to dismiss the HRO proceeding because the allegations were "not proven." Mother's pre-hearing request for a subpoena for Officer Negen, who would testify regarding daughter's statements about an incident alleged in the HRO petition, indicates that mother knew that the allegations in the petition were going to be at issue at the hearing.

Regarding the identity of the witnesses, mother knew that wife, who sought the hearing, was a potential witness. Mother also knew that she could be a witness. The only other people who addressed the court were grandmother, who was not sworn as a witness and who only provided background information regarding son's residence, and father. Father's home was the location of the alleged abuse. Mother should have expected that father could be a witness. And, father's testimony was limited to the allegations of abuse in mother's petition, which mother knew would be at issue. "Although the amount of process due in a particular case varies with the unique circumstances of that case,

prejudice as a result of the alleged violation is an essential component of the due process analysis[.]" *In re Welfare of the child of of B.J.-M.*, 744 N.W.2d 669, 673 (Minn. 2008) (citations omitted). Mother has not shown that the district court forced her to address unexpected issues at the hearing. Nor has mother shown any prejudice resulting from the testimony that was received.

Finally, mother complains that the district court did not consider son's alleged past acts of abuse against daughter. The transcript of the evidentiary hearing indicates the district court judge specifically asked mother whether daughter had ever reported abuse by son in the past. Mother described two previous allegations of abusive behavior. The record indicates that the district court considered all evidence presented by mother regarding son's alleged past acts of abuse against daughter.

E. Procedural Defects

Mother complains that the district court failed to (1) recognize that son's alleged conduct constituted domestic abuse, (2) consider the appointment of a guardian ad litem (presumably for daughter), and (3) give the case priority on the court's calendar. Mother's complaints are without merit. Consistent with mother's original petition, this case involves a request for an HRO under Minn. Stat. § 609.748, not an order for protection under chapter 518B. Accordingly, the issue before the district court was the existence of harassment, not domestic abuse. Appointment of a guardian ad litem and priority scheduling are not required under section 609.748. Finally, to the extent mother challenges the district court's failure to rule that son's conduct was criminal, HRO matters are civil, not criminal, unless the HRO is violated. *Dunham v. Roer*, 708 N.W.2d

552, 568 (Minn. App. 2006) (holding harassment statute is "quasi-criminal" because "although the harassment proceeding is civil in nature, criminal sanctions may result if the court order is violated"), *review denied* (Minn. Mar. 28, 2006).

F. Bias

Mother argues that the district court was biased against her. But because the record does not show that the question of bias was raised in the district court, the question is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally consider only issues presented to and considered by the district court); *Ag Services of America, Inc. v. Schroeder*, 693 N.W.2d 227, 237 (Minn. App. 2005) (applying *Thiele* to an allegation of district-court judge bias). Therefore, we decline to address the question of bias here.

G. Costs

Mother requests reimbursement for the costs of this appeal. The cost of an appeal can be taxed upon five days' written notice by the "prevailing party," and the notice of taxation is to be filed within 15 days "after" the filing of the decision. Minn. R. Civ. App. P. 139.03. Because we affirm the district court, mother is not the prevailing party and is not entitled to costs.

Affirmed.