STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0224

In the Matter of Krista Ann Dickenson
and o/b/o Minor Children, petitioner,
Respondent,

vs.

David James Carlson,
Appellant.

Filed October 23, 2017
Affirmed
Kirk, Judge

Anoka County District Court
File No. 02-CV-16-5048

Krista Ann Dickenson, Lino Lakes, Minnesota (pro se respondent)

Rebecca L. Duren, John P. Lesch, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

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

KIRK, Judge

Appellant challenges the district court's grant of a harassment restraining order (HRO) against him in favor of respondent and on behalf of the parties' joint minor children. Appellant argues that the district court (1) abused its discretion when it denied his request for a continuance due to medical reasons and (2) deprived him of due process by granting

the HRO by default. Appellant also seeks relief from the default order under Minn. R. Civ. P. 60.02. We affirm.

FACTS

Appellant David James Carlson is the father of respondent Krista Ann Dickenson's two minor children. In 2014, the district court granted respondent an HRO against appellant that expired in the spring of 2016.

On October 3, 2016, respondent petitioned the district court for an HRO for herself and on behalf of the parties' children. The district court granted an ex parte HRO against appellant for respondent only and scheduled a hearing on the HRO petition for October 17, 2016. Law enforcement's attempt to serve appellant with the ex parte order was unsuccessful because appellant had moved to an unknown address. Appellant did not appear at the October 17 hearing, and the district court continued the hearing to October 31, 2016, as appellant had not been personally served. Appellant was not personally served with notice of the rescheduled hearing and did not appear on October 31. The district court continued the hearing to December 12 and ordered service by publication on appellant. Notice was published on November 11 and provided that if appellant did not appear at the December 12 hearing the matter may proceed by default.

On December 1, appellant filed a motion in the district court requesting a continuance for medical reasons. Appellant stated that he received a concussion in a car accident on November 17 and his resultant symptoms made him medically and physically unable to represent himself at the December 12 hearing. Appellant attached two doctor's statements to his affidavit in support of the continuance request. Dr. Azber A. Ansar, MD

wrote on November 28 that appellant "recently was involved in a car accident and is in no condition to represent himself at this time in [his] upcoming court hearing." Dr. Edward Ford, MD wrote on November 23 that appellant "should be able to return to work or school . . ." but needed to be "[e]xcuse[d] from [his] anticipated court date due to persistent physical symptoms from [a] recent motor vehicle collision."

The district court issued an order denying appellant's continuance request on December 2. On December 9, pursuant to Minn. R. Gen. Pract. 115.11, without first requesting permission from the district court to do so, appellant improperly filed a motion for reconsideration of his continuance request. Appellant submitted additional medical statements, one from his therapist and a more detailed statement from his physician, specifying appellant's ongoing symptoms.[1]

The district court did not grant appellant permission to file a motion to reconsider and proceeded to hold a hearing on the HRO petition on December 12. Appellant did not appear at the hearing despite receiving notice by publication and despite having knowledge of the hearing date. The court noted at the hearing that appellant filed two requests for a continuance. The court also appeared to acknowledge the sophisticated nature of appellant's second request, the December 9 improper motion to reconsider, before stating

[1] Dr. Ansar's December 8 statement indicated that appellant was suffering from 13 specific symptoms, including severe headaches, memory loss, lack of concentration, fatigue, and lightheadedness. Dr. Ansar recommended that appellant refrain from participating in stress-inducing legal proceedings until his symptoms are resolved. Appellant's therapist, Eric Wittenberg, MSW, LICSW, wrote on December 8, that the concussion had impacted appellant's cognitive abilities, mood, and physical health. Wittenberg opined that appellant's participation in legal proceedings would be impossible until cleared by a physician.

that a request for continuance was denied. However, the court never explicitly granted appellant permission to bring the motion to reconsider, and the court did not directly consider the merits of the improper motion. The hearing proceeded by default, and the court considered the merits of the HRO petition.

At the conclusion of the hearing, the district court issued the HRO against appellant.[2] Because appellant did not appear at the hearing, the district court granted the HRO by default. The district court found that appellant violated the prior restraining order on two or more occasions and harassed respondent by text message and on social media, and used the police to conduct "harassment by proxy" by calling the police frequently to make claims about respondent. The district court also adopted all information included within respondent's affidavit and petition as its findings of fact. The HRO prohibited appellant from harassing, visiting, or contacting respondent and her minor children for a period of 50 years,[3] and restricted appellant from coming within one mile of respondent's residence or within 500 feet of her workplace. This appeal follows.

[2] The district court issued an amended HRO on the same day of the hearing to correct typographical errors. We construe the appeal as taken from the amended order as we ordered in our March order. *See Kelly v. Kelly*, 371 N.W.2d 193, 195 (Minn. 1985) (holding that notices of appeal are liberally construed in favor of their sufficiency).

[3] A 50-year HRO is the upper limit authorized by statute when the district court finds that the respondent has violated a prior or existing restraining order on two or more occasions. Minn. Stat. § 609.748, subd. 5(b) (2016).

D E C I S I O N

I. The district court did not abuse its discretion in denying appellant's original motion for a continuance or in declining to consider appellant's improperly filed motion to reconsider the request.

"Ordinarily, medical incapacity is grounds for a continuance." *Chahla v. City of St. Paul*, 507 N.W.2d 29, 32 (Minn. App. 1993), *review denied* (Minn. Dec. 14, 1993). However, "[t]he granting of a continuance is a matter within the discretion of the [district] court and its ruling will not be reversed absent a showing of clear abuse of discretion." *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). "[T]he critical question is . . . whether the denial prejudiced the outcome of the trial." *Torchwood Properties, LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010).

A. Appellant's original motion for continuance.

Appellant argues that the district court abused its discretion in denying his original motion for a continuance based upon his medical condition. Appellant submitted statements from two physicians in support of his December 1 motion for a continuance. The district court denied the request on December 2. In reaching its decision, the court found that the medical statements were vague and contradictory. The court noted that Dr. Ansar's statement provided no information on appellant's medical prognosis by which to evaluate appellant's ability to appear at the December 12 hearing. The court noted that Dr. Ford's statement did not specify appellant's symptoms, prognosis, or the court date from which appellant needed to be excused, and was contradictory in that it cleared appellant to return to work or school but said that he should be excused from court. *Cf. Straus v. Straus*, 254 Minn. 234, 235, 94 N.W.2d 679, 680 (1959) (noting that appellate courts defer to a

district court's resolution of factual questions presented by conflicting affidavits); *Hestekin v. Hestekin*, 587 N.W.2d 308, 310 (Minn. App. 1998) (citing this aspect of *Straus*). Further, the court found that respondent was aware of and opposed the continuance. Under these circumstances, appellant has not shown that the district court abused its discretion in denying the continuance.

Nonetheless, appellant argues that the district court abused its discretion because a continuance would not have prejudiced the outcome of the case as an ex parte HRO was already in place.

An error is prejudicial if it "might reasonably have changed the result." *Behlke v. Conwed Corp.*, 474 N.W.2d 351, 354 (Minn. App. 1991) (quoting *Poppenhagen v. Sornsin Constr. Co.*, 300 Minn. 73, 79-80, 220 N.W.2d 281, 285 (1974)), *review denied* (Minn. Oct. 11, 1991). A party cannot argue that a district court's denial of a motion for a continuance prejudiced the outcome when the appellant reacted to the denial by refusing to participate in the proceedings and thereby inflicted prejudice to his or her own case. *Torchwood*, 784 N.W.2d at 419-20; *see Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003) ("On appeal, a party cannot complain about a district court's failure to rule in her favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question."), *review denied* (Minn. Nov. 25, 2003).

In this case, after the district court denied his original motion for a continuance, appellant failed to appear at the HRO hearing on December 12, 2016. Thus, appellant forfeited his right to present evidence and testimony at the HRO hearing, and as a result,

he effectively admitted all of the allegations in respondent's HRO petition. *See State by Humphrey v. Ri–Mel, Inc.*, 417 N.W.2d 102, 110 (Minn. App. 1987) (stating that the entry of a default judgment is equivalent to an admission by the defaulting party to properly pleaded allegations), *review denied* (Minn. Feb. 17, 1988). Appellant cannot now argue on appeal that the court's denial of his original motion for a continuance prejudiced the outcome when appellant inflicted prejudice to his own case by failing to attend the HRO hearing.[4] Here, appellant has not shown that the district court abused its discretion in denying his original motion for a continuance, and he is estopped from arguing prejudice caused by his own reaction. *Torchwood*, 784 N.W.2d at 419-20.

B. Appellant's improperly filed motion to reconsider his continuance request.

Appellant argues that the district court abused its discretion by denying his motion to reconsider his continuance request. Motions to reconsider "are considered only at the district court's discretion." *In re Welfare of S.M.E.*, 725 N.W.2d 740, 743 (Minn. 2007). Under Minn. R. Gen. Pract. 115.11, "[m]otions to reconsider are prohibited except by express permission of the court . . . . Requests to make such a motion . . . shall be made only by letter to the court . . . ."

Appellant did not properly request permission from the district court to bring his motion to reconsider. Rather than submit a request letter pursuant to rule 115.11, appellant filed his motion to reconsider directly without first receiving the district court's permission.

[4] *Torchwood*, 784 N.W.2d at 419 ("When an appellant is the party who procured the alleged . . . error, the error is neither prejudicial nor available to the appellant as a basis for obtaining a new trial.") (quotation omitted).

Although the district court noted at the HRO hearing that appellant had filed a second request for a continuance, the court did not grant appellant permission to bring the motion to reconsider or expressly rule on the unauthorized motion. As a result, the district court cannot have abused its discretion by not granting an unauthorized motion.

Moreover, even if we were to interpret the district court's comment at the hearing as implicit permission to bring the motion, followed by a denial, appellant would still bear the burden of showing that the outcome was actually prejudiced as a result. *See Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 177 (Minn. App. 2009) ("[S]ilence on a [proper] motion is . . . treated as an implicit denial of the motion. . . . [But] [a]n appealing party bears the burden of demonstrating both error and prejudice."). As we earlier addressed, appellant is estopped from arguing that the district court's denial of his continuance request prejudiced the outcome of the case.

II. The district court did not violate appellant's due-process rights by granting respondent an HRO by default.

Appellant argues that the district court violated his procedural due-process rights by granting the HRO as a default matter. The fundamental due-process requirements are notice and an opportunity to be heard. *Sawh v. City of Lino Lakes*, 823 N.W.2d 627, 635 (Minn. 2012). Whether procedural due-process rights have been violated is a question of law we review de novo. *Plocher v. Comm't of Pub. Safety*, 681 N.W.2d 698, 702 (Minn. App. 2004).

Appellant contends that the district court denied his opportunity to be heard by denying his request for a continuance and then granting the default HRO. However,

appellant chose not to attend the hearing where he would have had an opportunity to be heard on the merits of respondent's HRO petition. Appellant's own failure to participate in the hearing after the court denied his request for a continuance is the source of any prejudice to his case, and he cannot now claim that the district court's procedure prejudiced him. *Torchwood*, 784 N.W.2d at 419-20 (explaining that an appellant's own prejudicial reaction renders an appellate court's review impractical or impossible). We conclude that the district court did not violate appellant's due-process rights.[5]

III. Relief from a default order pursuant to Minn. R. Civ. P. 60.02 is unavailable in this appeal because appellant did not first seek relief from the district court.

Minn. R. Civ. P. 60.02 allows a court to grant relief from a final order for certain enumerated reasons when it is justified to do so. Appellant directly appeals from the district court's entry of an HRO by default and seeks relief pursuant to Minn. R. Civ. P. 60.02. Generally, a party to an HRO proceeding must raise issues to the district court in order to preserve them for appeal. *Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 762 (Minn. App. 2013) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)), *review denied* (Minn. Sept. 17, 2013). The proper route to preserve most issues for appellate review is to first seek relief at the district court. *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *review denied* (Minn. Apr. 13, 1990).

[5] Pursuant to Minn. Stat. § 609.748, subd. 5(d) (2016), appellant "may request to have the restraining order vacated or modified if the order has been in effect for at least five years and [appellant] has not violated the order."

Because appellant did not bring a request to vacate the HRO at the district court, the issue was not preserved for this appeal, and we do not address it here.[6]

Affirmed.

[6] We express no opinion here on the appealability of a district court order addressing any motion appellant may bring to vacate the HRO at issue here.