This opinion is nonprecedential except as provided by Minn.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
A20-1360
A20-1369

Amanda Marie Van Ryswyk,
Respondent,

vs.

Joshua Thomas Van Ryswyk,
Appellant,

and

Joshua Thomas Van Ryswyk,
Appellant,

vs.

Amanda Marie Van Ryswyk,
Respondent.

Filed July 19, 2021
Affirmed
Segal, Chief Judge

Freeborn County District Court
File Nos. 24-CV-20-1076, 24-CV-20-1171

Amanda Van Ryswyk, Albert Lea, Minnesota (pro se respondent)

Kenneth R. White, Law Office of Kenneth R. White, P.C., Mankato, Minnesota (for appellant Joshua Van Ryswyk)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In these consolidated appeals arising out of the grant of a harassment restraining order (HRO) against appellant and the denial of appellant's petition for an HRO against respondent, appellant argues that the district court erred by holding an evidentiary hearing on his petition because respondent did not request a hearing, and by granting respondent's petition for an HRO against him and denying his petition for an HRO against respondent. We affirm.

FACTS

Appellant-husband Joshua Thomas Van Ryswyk (husband) and respondent-wife Amanda Marie Van Ryswyk (wife) were married in November 2018. After the parties were married, they had an "on and off" relationship and ultimately separated in February 2020. They maintained two homes throughout the marriage and do not have any children together.

On August 4, 2020, wife petitioned for an HRO against husband. Her petition alleged that, following their separation, husband engaged in acts of harassment that included following her, sending her harassing text messages, stealing her property, and using social media in a harassing way. The district court granted an ex parte HRO, and husband was served with a copy. On August 20, 2020, husband filed a request for a hearing on wife's petition. That same day, husband filed a petition for an HRO against wife. Husband alleged that wife had engaged in acts of harassment that included physical abuse, following him, threatening him, and violating medical-record privacy laws by accessing

and disclosing his medical records. The district court granted an ex parte HRO, and wife was served with a copy.

The district court scheduled a hearing on both petitions. At the conclusion of the hearing, the district court commented that it was "abundantly clear" that the communications between the parties were not representative of their "best selves" as they went through "very tense and emotional times" due to their divorce. But the district court determined that husband's behavior amounted to harassment that warranted the grant of wife's petition for an HRO, but wife's behavior did not. The district court thus issued an HRO against husband that prohibited him from contacting or harassing wife for a period of two years, and dismissed husband's petition for an HRO against wife. Husband now appeals.

DECISION

I. The district court did not err by holding an evidentiary hearing on husband's petition.

Husband first argues that the district court erred by holding an evidentiary hearing on his petition for an HRO because wife did not request a hearing. He argues that the district court thus lacked subject-matter jurisdiction[1] to hold an evidentiary hearing on

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[1] We disagree with husband that this presents an issue of subject-matter jurisdiction. "Subject-matter jurisdiction is the court's authority to hear the type of dispute at issue and to grant the type of relief sought." *Seehus v. Bor-Son Constr., Inc.*, 783 N.W.2d 144, 147 (Minn. 2010). Here, the district court had the authority to hear and grant petitions for HROs. The question is therefore not whether the district court had subject-matter jurisdiction, but whether it was procedurally proper for the district court to exercise its jurisdiction under the statute. *See Elbert v. Tlam*, 830 N.W.2d 448, 450 (Minn. App. 2013) (distinguishing between questions of subject-matter jurisdiction and procedural

husband's HRO petition and that, by statute, the ex parte HRO against wife should have remained in place. *See Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 760 (Minn. App. 2013) ("[W]hen no hearing is held because a respondent does not timely request a hearing, an ex parte [temporary HRO] . . . becomes an ex parte HRO . . . and remains in effect for the period set forth [in the temporary order]."), *review denied* (Minn. Sept. 17, 2013). The district court's application of the HRO statute is a legal question that we review de novo. *Harlow v. State, Dep't of Human Servs.*, 883 N.W.2d 561, 566 (Minn. 2016).

We reject husband's argument because it appears that husband, himself, requested a hearing on his petition for an HRO against wife. Paragraph 12 of husband's petition states, "I am requesting a court hearing. I would ask that it be scheduled in connection with the contested hearing under court file number 24-CV-20-1076," which is the court file number for wife's HRO petition against husband. (Emphasis omitted.) Minn. Stat. § 609.748 (2020) sets out the procedure for obtaining an HRO. Subdivision 3(a) of that section provides that the petitioner may request a hearing and that "[u]pon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing." Because husband requested a hearing on his own petition, the district court was required to schedule a hearing irrespective of whether wife requested a hearing. The district court therefore did not err by holding an evidentiary hearing on husband's petition.

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jurisdictional defects), *review granted* (Minn. July 16, 2013), *and review denied* (Minn. Sept. 25, 2013).

II. The district court did not abuse its discretion by denying husband's petition for an HRO against wife.

A district court may issue an HRO if the court finds that there are reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3). "Harassment" is defined to include "repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect . . . on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target." Minn. Stat. § 609.748, subd. 1(a)(1); *see Peterson v. Johnson*, 755 N.W.2d 758, 764 (Minn. App. 2008) (explaining that the statute requires proof of objectively unreasonable conduct on the part of the harasser and an objectively reasonable belief on the part of the person subject to the harassment). A single incident of the type of harassment presented in this case is insufficient to support an HRO. *Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004).

We review the decision to grant or deny an HRO for an abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731-32 (Minn. App. 2000). A district court's factual findings will not be set aside unless they are clearly erroneous, with due regard being given to the district court's opportunity to evaluate witness credibility. Minn. R. Civ. P. 52.01; *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

In claiming that the district court abused its discretion by denying his HRO petition, husband argues that wife, a nurse with the Mayo Clinic, improperly accessed and disclosed his medical information and that this constituted harassment justifying an HRO against

wife. Husband testified that, after the parties' separation, he became concerned that wife was using the Mayo Clinic's computer system to access his medical information. Husband reported his concern to the Mayo Clinic's Privacy Office, which in turn investigated the matter. A privacy officer determined that on two occasions wife had accessed husband's general demographic information, which included his "name, address, date of birth, medical record number, health insurance carrier, email address, home and work phone numbers, the name of [his] primary care provider, primary language, religion, ethnicity, and race." She did not access any specific medical record. Wife acknowledged that she accessed the information, but indicated that it was a mistake rather than the result of any attempt to access or release husband's medical records.

Husband also complained of wife's disclosure of a document that wife claimed she discovered in a box in her basement, wholly unrelated to the Mayo Clinic or her work. The document was a report prepared by a psychologist in connection with an earlier court proceeding in California involving husband. The parties agreed that the document was "a report of an adverse medical examiner" (the adverse report) that was "created as part of litigation . . . at the behest of someone other than" husband. The adverse report contained information about husband's previous mental-health diagnoses of which wife had been unaware. The diagnoses concerned her in light of his behavior during their separation. Wife communicated her concerns about her own safety to a third party and sent the third party a photo of the adverse report. Wife asked the third party not to disclose their conversation to anyone.

The district court determined that these allegations were not sufficient to support the grant of an HRO against wife. The district court noted that the demographic information she accessed on two occasions was information that wife would "already be full well aware of like his religious preferences and his race." The district court acknowledged wife sent a picture of the adverse report to a third party, but determined that "to claim that somehow [husband has] been tortured by the sharing of a single document with one other identified individual, the Court just cannot find as credible." The district court also generally noted that the determination that husband was not entitled to an HRO was based on the court's "assessment of credibility and review of the exhibits that were received."

Husband challenges the district court's conclusions, arguing first that the district court inappropriately rejected his concerns related to wife's access of his demographic data at her work. But the district court asked husband if he "no longer [has] faith and confidence in Mayo as a provider to protect [his] sensitive information" and whether husband had looked for different providers. Husband responded, "I have full faith in the Mayo Clinic protecting my privacy now they're aware. I have no issue with them protecting my privacy going forward" and that he had not made any effort to look for a different provider. This testimony, combined with the district court's observation that the only information accessed was demographic information wife was already aware of, supports the district court's determination that the actions had little overall impact on husband.

Husband also asserts that the district court erred by determining that wife's disclosure of the adverse report did not violate the Minnesota Health Records Act, Minn.

Stat. §§ 144.291-.298 (2020), because the act specifically covers independent medical examinations. Husband, however, misreads the scope of coverage of the act. The Minnesota Health Records Act applies "to the subject and provider of an independent medical examination requested by or paid for by a third party." Minn. Stat. § 144.297. While wife is a nurse, neither she nor her employer were the healthcare provider with respect to the adverse report and the act was not violated.

We also disagree with husband's assertion that the district court erred in declining to conclude that wife's actions were "intended to have an adverse effect" on husband. A subjective standard may be applied when determining an alleged harasser's intent. *Kush*, 683 N.W.2d at 845. Here, wife sent the adverse report to only one person and explained that the contents of the report, which described multiple mental-health diagnoses, made her concerned for her safety. Wife also noted that she was previously unaware of the diagnoses and that husband had "adamantly denied a problem even exists." Finally, she requested that the third party not discuss their conversation with anyone. Given the limited disclosure and the reasonable explanation for it, we conclude that the district court's findings on this issue were not an abuse of discretion.

Husband's next argument is that wife's emails and texts provided sufficient evidence to support his claim that wife harassed him. He argues that the "communications adversely impacted [him], often ultimately resulting in an inappropriate response." But as the district court noted, the evidence submitted reflects that "while on the one hand he claims he wants no contact, he responds to legitimate contacts from [wife] that normal people can have during the course of a dissolution and he uses those as opportunities to

bully and badger her in ways that just do not reflect well on [him]." Again, the district court's findings are supported by the record and do not constitute an abuse of discretion.

Finally, husband argues that wife physically assaulted him. He acknowledges that the district court discounted this testimony, but argues that when credibility determinations "flow from a legal error, they require reconsideration." He cites no legal authority to support this assertion, and on appeal this court will "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Here, the district court's findings are supported by sufficient evidence and we reject appellant's claims that the district court made errors in applying the law. We therefore conclude that the district court did not abuse its discretion in denying husband's petition for an HRO.

III. The district court did not abuse its discretion by granting wife's petition for an HRO against husband.

Husband next argues that the district court abused its discretion by granting wife's petition for an HRO because the district court judge was biased and the record does not support the grant of the HRO. We will address each assertion in turn.

A. Judicial Bias

An appellate court presumes that the district court judge discharged all judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). And we objectively review the facts and circumstances surrounding a claim of judicial bias. *State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008). The presumption that a judge discharged all judicial duties in an objective and neutral manner may be overcome only if

the party alleging bias produces evidence of favoritism or antagonism. *Id.* at 603. Adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

We first note that husband did not raise the issue of bias before the district court. An appellate court considers "only those issues that the record shows were presented and considered by the trial court in deciding the matter before it." *Gummow v. Gummow*, 375 N.W.2d 30, 34 (Minn. App. 1985) (quotation omitted). A party's failure to raise a claim of judicial bias during the proceedings raises doubt about the timeliness of the issue. *Id.* But regardless of whether the issue was raised before the district court, husband's claim fails on the merits.

Husband argues that the district court judge exhibited bias by repeatedly interjecting, asking questions of the parties, and in the court's explanation of its decision. The district court did interject on several occasions to ask husband's attorney to move on from questions that had already been asked and answered, but evidence of impatience with an attorney does not demonstrate bias. *Id.* Husband also points, as evidence of bias, to the district court's observations that husband "presents as really having no insight into his own behavior," "no ability to take ownership for his own bad choices and bad actions," and that "during the course of the hearing he has under oath stated things that [were] contradicted" by the evidence presented. However, "opinions formed by the judge on the basis of facts introduced or events occurring in the course of . . . proceedings[] do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Burrell*, 743 N.W.2d at 603 (quoting *Liteky*

v. United States, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994)). Here, the district court's opinions were based on the evidence and testimony presented and relevant to assessing the parties' harassment allegations. In context, the statements are reasonably interpreted as an explanation by the court of the basis for its rulings and not as evidence of a "deep-seated favoritism or antagonism." We therefore conclude that husband has failed to overcome the presumption that the district court discharged its duties in an objective and neutral manner.

B. Evidentiary Basis

Husband's second claim is that the record does not support the grant of the HRO against him. The district court summarized its reasons for granting the HRO as follows:

> Turning then to Ms. Van Ryswyk's claims, she has amply shown that Mr. Van Ryswyk has called her abusive names. That while on the one hand he claims he wants no contact, he responds to legitimate contacts from Ms. Van Ryswyk that normal people can have during the course of a dissolution and he uses those as opportunities to bully and badger her in ways that just do not reflect well on Mr. Van Ryswyk.
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> So between the cyber-bullying of putting the false information on Facebook and then trying to stir up public sentiment against Ms. Van Ryswyk, his false allegations that would undermine her employment and filing his own petition, frankly and obviously, in retaliation for Ms. Van Ryswyk having the nerve to try to protect herself and her employment does constitute harassment, and it has had an adverse impact as it was intended to, although not as badly affecting Ms. Van Ryswyk as what he has hoped. So on that basis Ms. Van Ryswyk is entitled to a continuation of her order.

The district court then detailed the harassing statements and social-media posts upon which the order is based, including statements by husband that wife was unprofessional

and exhibited the "dirtiest level" of behavior, had a "complete lack of integrity or empathy," and exhibited qualities unbecoming a registered nurse. Husband also told wife that he promised she would "be further disgraced" and asserted that she was "not human, you are a disorder," a "one night stand queen," a "soulless, empty, pathologically damaged person," and a psychopath. These statements were all taken from email and text communications submitted as evidence. The district court determined that the public posts were made "to numerous people with intent to publicly degrade and embarrass" wife. Finally, the district court noted that husband stole property from wife.

Husband acknowledges that he made inappropriate statements and written communications to wife. But he argues that the statements "were made, largely, in a fit of passion" and that inappropriate statements alone cannot support the grant of an HRO. *See Witchell*, 606 N.W.2d at 732 (reversing the grant of an HRO and concluding that "[a]lthough husband's statements are inappropriate and argumentative, we cannot say that they were intrusive or that they were intended to adversely affect the safety, security, or privacy of wife"). He also argues that the record does not support the district court's determination that he stole property or that his social-media posts contained false information meant to undermine her employment.

We conclude, however, that the district court's findings are supported by the record. First, with regard to the allegation of stolen property, the district court's finding has support in wife's testimony that she noticed items were missing after husband came to collect some of his items from her house and that husband later acknowledged being in possession of at least one of the missing items. Turning to husband's argument that the HRO was based

only on communications between husband and wife, this is simply not the case. The district court also grounded the HRO on other actions and communications, including social-media posts made by husband to others. Moreover, even if that were not the case, an HRO can be grounded on comments made only to the petitioner if the comments go beyond being merely "inappropriate and argumentative" and are instead "intrusive or . . . intended to adversely affect the safety, security, or privacy" of petitioner. *See id.*

With regard to husband's social-media posts, his original post asserted that wife sent a picture of a medical report (referring to the adverse report) to a third party and identified wife's employer by name. In the post, husband also stated that anyone with a copy must destroy it to be "in compliance with State and Federal Law," and that the document was "not accurate." At the time husband made these posts, he was aware that the adverse report was not connected with Mayo Clinic and that wife discovered it in a box in her basement. Nevertheless, husband's posts strongly suggest that wife used her position at the Mayo Clinic to obtain the adverse report, that she has access to everyone's personal health information and may disclose it, and that he was trying to prevent others from becoming a "victim of her misconduct." He opined that her conduct was illegal under state and federal law and "a nasty thing to do from someone trusted with everyone in our communities' [personal health information]." This evidence is sufficient to support the district court's findings that husband's social-media posts were an attempt to degrade and embarrass wife and threaten her employment.

Affirmed.