

*This opinion is nonprecedential except as provided by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
A21-0235**

In the Matter of: Cody Scott Johnson, obo Minor,
Respondent,

vs.

Juana Chavez-Martinez,
Appellant.

**Filed November 1, 2021
Affirmed
Connolly, Judge**

Kandiyohi County District Court
File No. 34-FA-20-336

Adam J. Schrader, Amundson Law, Spicer, Minnesota (for respondent)

Kimberly Anne Stommes, Stommes Law Office, St. Cloud, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant challenges the issuance of an order for protection due to the allegedly improper admission of hearsay evidence and biased behavior by the district court at the evidentiary hearing. Because we discern no prejudice resulting from the hearing, we affirm.

FACTS

Appellant Juana Chavez-Martinez is the maternal aunt of two children—twins born to respondent Cody Johnson and Guadalupe Chavez-Martinez (mother) in 2013. The children primarily reside with Chavez-Martinez and their mother. Johnson has regular parenting time with the children in his home.¹

On December 2, 2020, Johnson recalls that during his parenting time, one child came to him and described an incident where Chavez-Martinez kicked the child's leg—leaving a mark—and pulled the child's hair such that the child was lifted off the ground. Johnson used his cell phone to record the child explaining the incident. Johnson then reported the incident to child protective services, who ultimately took no action.

On December 18, both children approached Johnson during his parenting time. One child told Johnson that Chavez-Martinez pulled the child's hair twice and forced the child to sleep on the floor. The other child told Johnson that Chavez-Martinez walked into the bathroom while the child was brushing their teeth, “smacked” the child in the head, and pulled the child's hair. This child also related Chavez-Martinez had “smacked” the child in the head again later that same day. Johnson recorded both conversations.

Two days later, Johnson drove the children to mother's home to drop them off after his weekend parenting time. One child began to cry in the car and resisted going into the home. Johnson once again began to record the events, and confronted mother in the

¹ Johnson has parenting time on Wednesdays after school, on alternating weekends, and for six hours on Saturdays during weekends the children stay with their mother.

doorway. Mother stated that Johnson was the source of the children's distress and was dismissive of Johnson's concerns about Chavez-Martinez.

Johnson filed a petition for an order for protection (OFP) on behalf of the children on December 31, 2020. The petition alleges Chavez-Martinez mistreated the children and repeated the allegations the children related to Johnson earlier in the month. The petition further alleges that Chavez-Martinez was the cause of "a patch of hair missing" on one child's head and "finger figured marks" on the child's cheek. The district court granted an emergency ex parte OFP that same day.

The district court held an evidentiary OFP hearing in February 2021. Johnson testified as to what his children told him in December, and he introduced the four recordings into evidence. The district court admitted the recordings over several objections by Chavez-Martinez's counsel that the recordings are inadmissible hearsay.² Johnson also testified that he examined the children and discovered bruises, hand marks, and bald spots on the children almost immediately after they arrived in his care from being in the home with Chavez-Martinez.

Chavez-Martinez testified on her own behalf and stated that because she worked nights, she rarely interacted with the children. Nevertheless, she asserted she never slapped them, pulled their hair, or abused them. Mother testified as well, and asserted she is a stay-at-home mother present "all the time" to observe Chavez-Martinez's interactions with the

² The exchanges surrounding these hearsay objections became contentious, with the district court remarking to Chavez-Martinez's counsel that "if you would like to argue with me further, I think it's not going to go well for you" before admitting the recordings as "non-hearsay" for their "effect on the listener" as well as "any number of non-hearsay issues."

children. Mother testified she never witnessed Chavez-Martinez abuse the children. She also testified that she spoke to Chavez-Martinez about “all this stuff that [Johnson] was making up . . . all the lies,” and that she felt “it’s just very hard to believe.” Chavez-Martinez also presented evidence that mother took the children to be assessed by a psychologist, who indicated the children reported abuse by Johnson but not Chavez-Martinez.

The district court determined that Johnson corroborated the allegations of abuse and that Chavez-Martinez’s evidence was not credible.³ As a result, the district court issued the OFP. Chavez-Martinez appeals.⁴

DECISION

Chavez-Martinez argues that the OFP must be reversed because the district court erroneously admitted prejudicial hearsay evidence and the district court’s behavior deprived her of due process. We address each argument in turn.

I. Chavez-Martinez failed to establish prejudice resulting from the recordings.

Chavez-Martinez contends the recordings were inadmissible hearsay. Hearsay is “a statement, other than one made by the declarant while testifying . . . offered in evidence to

³ The district court specifically noted that mother “invalidated” and “dismissed” the children while being “defensive” of Chavez-Martinez. The district court further discredited the testimony of the psychologist because mother “provided all of the information and guided that process,” and because the psychologist “was not informed of the allegations” involving Chavez-Martinez.

⁴ Johnson did not file a responsive brief and the matter is proceeding for a determination on the merits pursuant to Minn. R. Civ. App. 142.03.

prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally inadmissible. Minn. R. Evid. 802. We review a district court’s ruling on a hearsay objection for an abuse of discretion. *Aljubailah v. James*, 903 N.W.2d 638, 644 (Minn. App. 2017). “A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quotation omitted). But on appeal Chavez-Martinez must also demonstrate “that an evidentiary error resulted in prejudice.” *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 842 (Minn. App. 2017). We conclude that even if the district court erroneously admitted the recordings, Chavez-Martinez has failed to establish prejudice.

A petitioner must demonstrate domestic abuse by a preponderance of the evidence for an OFP to issue. Minn. Stat. § 518B.01, subd. 4 (2020); *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). Chavez-Martinez contends that without the recordings, the evidence adduced at the hearing does not satisfy Johnson’s burden. *See Olson*, 892 N.W.2d at 842 (determining erroneously admitted hearsay evidence prejudiced appellant because such evidence constituted the only proof of domestic abuse). We disagree. Johnson testified that he observed the children in distress, discovered bruises, hand marks, and bald spots on them shortly after being in Chavez-Martinez’s care, and that the children were fearful of returning to the home with Chavez-Martinez. The district court found that Johnson had discovered “signs of abuse” on the children based on this testimony. The district court further made implicit credibility findings against Chavez-Martinez and mother, discrediting their

testimony relating to the cause of the abuse.⁵ The evidence in the record independent of the recordings is sufficient to support the finding of abuse, and Chavez-Martinez does not challenge the sufficiency of that evidence. Because the record contains evidence sufficient for Johnson to meet his evidentiary burden independent of the recordings, Chavez-Martinez has failed to establish prejudice even if the recordings are inadmissible hearsay.

II. The district court did not deprive Chavez-Martinez of due process.

Chavez-Martinez argues that she is entitled to a new hearing because the district court's conduct demonstrated bias against her. An impartial trier of fact "is the very foundation of the American judicial system." *Greer v. State*, 673 N.W.2d 151, 155 (Minn. 2004). Accordingly, "[n]o judge shall sit in any case if disqualified" for bias under the Code of Judicial Conduct. Minn. R. Civ. P. 63.02; *see also* Minn. Code Jud. Conduct Rule 2.2 (stating a judge shall "perform all duties of judicial office fairly and impartially"); 2.3(A) (stating "[a] judge shall perform the duties of judicial office, . . . without bias or prejudice"). The lack of an impartial judge requires automatic reversal. *State v. Dorsey*, 701 N.W.2d 238, 253 (Minn. 2005). "Whether a judge has violated the Code of Judicial Conduct is a question of law" reviewed de novo. *Id.* at 246.

Chavez-Martinez contends that the district court displayed bias by acting hostile and argumentative toward her attorney at the hearing. Judges are presumed to be "neutral and objective." *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016). Chavez-Martinez may

⁵ We defer to the district court's determinations of witness credibility. *Aljubailah*, 903 N.W.2d at 643; *see Pechovnik*, 765 N.W.2d at 99 (deferring to an implicit credibility determination made by the district court).

overcome this presumption with “evidence of favoritism or antagonism.” *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). Chavez-Martinez asserts the district court displayed antagonism towards her and her counsel by becoming “angry” at objections, “becoming an advocate for [Johnson]” by specifying grounds for admissibility, and by admonishing her counsel that “if you would like to argue with me further, I think it’s not going to go well for you.” It is true that the district court consistently overruled Chavez-Martinez’s hearsay objections. But adverse rulings by a judicial officer are not demonstrative of bias. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986). Moreover, the district court also admonished Johnson’s counsel during the exchange. We conclude that, while the district court may have used inartful language, it did not display favoritism or antagonism toward either party such that it “would cause a reasonable examiner to question the judge’s impartiality.” *Burrell*, 743 N.W.2d at 601.

Affirmed.