This opinion is nonprecedential except as provided by Minn.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
A23-0582

Natasha Siefker Cook and o/b/o Minor Children,
Respondent,

vs.

Tobin Jack Cook,
Appellant.

Filed December 26, 2023
Affirmed
Bratvold, Judge

St. Louis County District Court
File No. 69DU-CV-21-2354

Natasha Siefker Cook, Duluth, Minnesota (pro se respondent)

Tobin Jack Cook, Duluth, Minnesota (pro se appellant)

Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges a harassment restraining order (HRO) issued in favor of respondent, his former spouse. Appellant argues that the district court erred by (1) finding facts that are not supported by the record, (2) considering a letter written by a psychologist, and (3) granting an HRO even though the evidence and factual findings did not support doing so. Because we conclude that the record in this appeal supports the challenged factual

findings, the record does not show that the district court considered the letter, and the district court did not abuse its discretion by granting the HRO, we affirm.

FACTS

Appellant Tobin Jack Cook and respondent Natasha Siefker Cook (Siefker) were married in August 2007 and dissolved their marriage in February 2021. They are the parents of three children, of whom they share joint legal and joint physical custody. Following many conflicts between Siefker and Cook relating to parenting the children, Siefker petitioned for an HRO against Cook for herself and on behalf of their children on December 6, 2021. In her verified petition, Siefker attested, among other things, that Cook "pick[ed] up" the children "from [her] house" during her parenting time and without her consent, entered her home without permission, and alienated the children from Siefker by saying they are "unsafe when at [her] home" and providing a "secret phone" for the children to call 911 or Cook. The district court denied Siefker's request for an ex parte HRO and ordered that the matter be scheduled for a hearing. Cook also petitioned for an HRO against Siefker on October 13, 2022.

The same district court judge addressed both HRO petitions as well as other pending motions in the parties' dissolution case at an evidentiary hearing on November 28, 2022. After the hearing, the district court dismissed Cook's HRO petition and granted Siefker's HRO petition in part, issuing an HRO as to Siefker for a period of one year, to end March 1, 2024. The HRO did not include the children. The HRO included findings that "[t]here are reasonable grounds to believe that [Cook] has engaged in harassment which has or is intended to have a substantial adverse effect on safety, security or privacy of [Siefker]" by

(1) making "uninvited visits to [Siefker]," specifically, coming "to her home when asked not to," and (2) "[i]nterfer[ing] in [Siefker's] relationship with the parties' joint children by engaging in overt chronic acts of parental alienation, including taking the children during [Siefker's] parenting time with her specific knowledge or express consent and by inducing animosity between the children and [Siefker]."[1]

Cook appeals.[2]

DECISION

We review a district court's decision granting an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). "A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record." *Borth v. Borth*, 970 N.W.2d 699, 701 (Minn. App. 2022) (quotation omitted). We review the district court's findings of fact for clear error and defer to the district court's credibility determinations. *Kush*, 683 N.W.2d at 843-44.

"Findings of fact . . . shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. A finding is clearly erroneous only if it is "manifestly contrary to"

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[1] The district court's finding states that Cook took the children "with" Siefker's knowledge or consent. This appears to be a clerical error, as discussed below.

[2] Cook also appealed the district court's order denying his motion in the parties' dissolution case, which is submitted to a different panel for decision.

or "not reasonably supported by" the evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted). An appellate court should "view the evidence in a light favorable to the findings" and only conclude that findings are clearly erroneous if, based "on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed." *Id.* (quotation omitted). Additionally, an appellate court may not "engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance." *Id.* at 221-22 (quotation omitted). Accordingly, an appellate court "need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the trial court." *Id.* at 222 (quotation omitted).

Cook is self-represented on appeal, and Siefker did not submit a brief. We decide this appeal on the merits under Minn. R. Civ. App. P. 142.03, which provides that "[i]f the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits." In his brief submitted to this court, Cook argues the district court issued the HRO "based on erroneous findings," relied on "a county psychologist['s]" letter that "is not sufficient evidence to find [Cook] guilty of harassment," and "delivered a decision that is contrary to the facts and against logic." We address each of Cook's three arguments.

I. The record supports the district court's factual findings.

Cook argues that the HRO was "based on erroneous findings" and makes two main points, which we discuss in turn. First, Cook contends that the HRO should have been dismissed because he "understood" that the parties agreed "he would be dismissing his restraining order against [Siefker], if she would be dismissing her petition against him."

Cook does not cite the record, and our review of the record yielded nothing to support this claim; therefore, we do not discuss it further.

Second, Cook contends that the district court erred in making specific factual findings about Cook making uninvited visits to Siefker's home, alienating the children from Siefker, and "taking" the children during Siefker's parenting time. Before analyzing each of the challenged factual findings, we consider what comprises the record in this appeal. The appellate record consists of "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings." Minn. R. Civ. App. P. 110.01. The appellant has the duty to order any transcript "deemed necessary for inclusion in the record." Minn. R. Civ. App. P. 110.02, subd. 1(a). Thus, the appellant "has the burden to provide an adequate record" for the appeal. *Mesenbourg v. Mesenbourg,* 538 N.W.2d 489, 494 (Minn. App. 1995). The record must be "sufficient to show the alleged errors and all matters necessary for consideration of the questions presented." *Truesdale v. Friedman*, 127 N.W.2d 277, 279 (Minn. 1964).

When there is an evidentiary hearing, appellate courts cannot review a party's argument that the other party did not prove its factual claims if no transcript is ordered. *See Custom Farm Servs., Inc. v. Collins*, 238 N.W.2d 608, 609 (Minn. 1976) (stating that "[b]ecause of the absence of a transcript of the district court proceedings, [the supreme court] cannot consider" several errors that the appellants contend occurred, including "sufficiency of the evidence"). When a transcript is not included in the record, this court's task is "limited to determining whether the trial court's findings of fact support its

conclusions of law." *Am. Fam. Life Ins. Co. v. Noruk,* 528 N.W.2d 921, 925 (Minn. App. 1995), *rev. denied* (Minn. Apr. 27, 1995).

In this appeal, Cook did not provide this court with a certified copy of the evidentiary-hearing transcript as specified in Minn. R. Civ. App. P. 110.02, subd. 1(a), which requires that an appellant order any transcripts to be included in the record from the court reporter. We note that Cook included a certified copy of the evidentiary-hearing transcript as part of the addendum he filed with his brief to this court; Cook, however, did not order that transcript for this appeal. In addition, no certificate as to transcript or certificate of filing and delivery of transcript was filed with the Clerk of the Appellate Courts in this appeal. *See* Minn. R. Civ. App. P. 110.02, subd. 2(a)-(b). Because Cook failed to order the evidentiary-hearing transcript and file a certificate with the Clerk of the Appellate Courts for this appeal, the transcript is therefore not part of the record. *See* Minn. R. Civ. App. P. 110.01.

We recognize that Cook is self-represented on appeal. "When an appellant acts as attorney pro se, appellate courts are disposed to disregard defects in the brief, but that does not relieve appellants of the necessity of providing an adequate record and preserving it in a way that will permit review." *Thorp Loan & Thrift Co. v. Morse*, 451 N.W.2d 361, 363 (Minn. App. 1990), *rev. denied* (Minn. Apr. 13, 1990). By failing to order a certified copy of the evidentiary-hearing transcript for this appeal, Cook did not provide an adequate record for this court to review the district court's factual findings in the HRO based on the evidence received at the hearing. *See Custom Farm Servs.*, 238 N.W.2d at 609. Thus, our review of the district court's HRO is limited to the record before us—which includes

Siefker's verified petition and the HRO but does not include the transcript in the addendum to Cook's brief—and to determining whether the findings of fact support the conclusions of law. *See Noruk,* 528 N.W.2d at 925.

Using the record in this appeal, we consider Cook's challenges to the district court's factual findings. First, Cook argues that the district court erred by finding that he made uninvited visits to Siefker's home. The district court's finding is supported by Siefker's sworn statements in her petition, in which she stated that Cook made uninvited visits to her home from August through October 2021 when Cook returned the children to Siefker's home while she was not there.

Second, Cook argues that the district court erred by finding that he picked up the children during Siefker's parenting time and otherwise alienated the children from Siefker. Cook included copies of text messages between Siefker and himself in his addendum and contends that these text messages contradict the district court's findings. Although the table of contents for Cook's addendum asserts that the text messages were "exhibits," the text messages are not included in the record for this appeal. *See* Minn. R. Civ. App. P. 110.01. Thus, we do not consider them.[3]

Based on our review of the record in this appeal, we conclude that it supports the district court's findings that Cook picked up the children without Siefker's permission and

[3] Even if we were to consider the text messages, we are not persuaded that they contradict the district court's findings or demonstrate error, because Cook provided text messages for some, but not all, instances in which he picked up the children for parenting time. Even if Cook had permission to pick up the children on some dates, the district court found that Cook took the children without Siefker's permission between August and October 2021, and this finding is supported by Siefker's verified petition.

engaged in conduct that alienated —or at least attempted to alienate—the children from Siefker. Siefker's petition attested to Cook picking up the children "without [her] consent" from August to October 2021. Siefker also averred that Cook alienated her children from her by "provid[ing] the kids with a secret phone," encouraging them to "call 911 or him all hours of the night stating they feel unsafe and want to go to dad's," refusing to participate in court-ordered family therapy, and "us[ing] the kids to check up on [her] such as where [is she], who [is she] with." Thus, the record supports the district court's factual findings in the HRO.

II. The district court did not err by considering a county psychologist's letter.

Cook argues that the district court erred when it considered a letter from a psychologist for St. Louis County.[4] Cook included this letter in the addendum he submitted along with his brief to this court, but the letter is not part of the record for this appeal; thus, we do not consider it. *See* Minn. R. Civ. App. P. 110.01.

Cook's argument nonetheless lacks merit because the district court did not mention the psychologist's letter in the HRO, nor does the record indicate that the district court considered this letter when reaching its conclusions. Thus, we reject Cook's argument about the county psychologist's letter.

[4] Cook argues that the district court improperly considered this letter because (1) the psychologist failed to obtain informed consent from Cook and the children, (2) the letter is inadmissible under Minn. Stat. § 595.02, subd. 1(g) (2022), and (3) the letter contains inadmissible character evidence.

III. The district court did not abuse its discretion by granting the HRO.

Cook also argues that "the district court delivered a decision that is contrary to the facts and against logic" for three reasons that we consider in turn.

First, Cook contends that, because the HRO did not restrict him from contacting the children, this "proves that the allegation that [Cook] alienates the children or negatively impacts the relationship between [Siefker] and the children is false and should not be a basis for a restraining order." Cook fails to provide any legal support or reasoning for this argument. "An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971); *see State Dep't of Lab. & Indus. by the Special Comp. Fund v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issues inadequately briefed). We discern no error. Considering that the parties share custody of the children, the district court had discretion to grant the HRO for Siefker and not the children.

Second, Cook argues that the HRO relies on "information and evidence from the [dissolution] case being on trial at the same time as this case" and that he should be permitted to provide additional evidence to support his position on appeal. Cook's argument is not supported by the record, nor does he cite legal authority for supplementing or modifying the record on appeal. *See, e.g.*, Minn. R. Civ. App. P. 110.05 (providing that a party may seek to correct or modify the record on appeal by submitting the request to the district court).

Third, Cook argues that the district court expressly found that he took "the children during [Siefker's] parenting time *with* her specific knowledge or express consent," which does not support granting the HRO. (Emphasis added.) Cook appears to be relying on a clerical mistake in the district court's order. A clerical mistake is a mistake "arising from oversight or omission." Minn. R. Civ. P. 60.01. This court can discern a clerical error based on context when the error is clear from the record and cannot be attributed to judicial discretion. *State v. Verdon*, 727 N.W.2d 418, 420 (Minn. App. 2007). When we read the finding upon which Cook relies in context, however, it is clear that the district court found that Cook took the children *without* Siefker's permission because the same factual finding states that Cook interfered in Siefker's relationship with the joint children.

We also conclude that this clerical error is harmless. The mere existence of an error is not sufficient to support relief on appeal; an appellant must also show that the error prejudiced them. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (stating that "[a]lthough error may exist, unless the error is prejudicial, no grounds exist for reversal"); *cf. Borth v. Borth*, 970 N.W.2d 699, 706 (Minn. App. 2022) (reversing and remanding the denial of an HRO when the district court's error was not harmless). While the HRO appears to include a clerical error, the district court's other factual findings support the HRO. Thus, even if we disregard the finding related to Cook taking the children or assume that Cook took the children with Siefker's permission and consent, we would nonetheless affirm based on the other findings about Cook's uninvited visits to Siefker's home and Cook's alienation of

the children from Siefker. Accordingly, even if the district court made a clerical mistake, the error is harmless.

Affirmed.