

IN THE UTAH COURT OF APPEALS

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Carol Thurgood,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080172-CA
v.)	
)	F I L E D
David A. Errigo,)	(November 14, 2008)
)	
Defendant and Appellant.)	2008 UT App 413

Second District, Farmington Department, 074701081
The Honorable Glen R. Dawson

Attorneys: David A. Errigo, Lava Hot Springs, Idaho, Appellant
 Pro Se

Before Judges Thorne, Bench, and Orme.

PER CURIAM:

David A. Errigo appeals from the district court's protective order in favor of Errigo's sister, Carol Thurgood. We affirm.

"As an appellate court, our 'power of review is strictly limited to the record presented on appeal.'" Gorostieta v. Parkinson, 2000 UT 99, ¶ 16, 17 P.3d 1110. In simple terms, this means that this court is limited to reviewing solely the evidence reviewed by the district court. See Utah R. App. P. 11(a) (describing composition of the record on appeal). Accordingly, this court may not review evidence that was not presented to the district court and must disregard any newly presented materials improperly included in a party's brief. See Tillman v. State, 2005 UT 56, ¶ 14, 128 P.3d 1123. Here, Errigo asks this court to review facts and testimony not presented to the district court in the form of his "sworn affidavit," which is included within the text of his brief.¹ Such affidavit, including information concerning events that transpired after the proceeding in the district court, is new evidence that was not included in the record on appeal. Accordingly, this court is prohibited from

¹Errigo did not testify in the proceeding in the district court.

reviewing this affidavit. As a result, this court does not have the power to consider any issues premised upon the information contained in the affidavit.

In addition to including evidence that was not part of the record on appeal, Errigo also raises several issues that were not raised in the district court. "As a general rule, appellate courts will not consider an issue raised for the first time on appeal." State v. Amoroso, 1999 UT App 60, ¶ 7, 975 P.2d 505. Therefore, this court will not consider the following issues raised by Errigo for the first time in this appeal: (1) the form of the order, i.e., that the order was prepared by Thurgood's counsel for the court's signature and contained the attorney's information on the front of the order;² (2) the district court's alleged failure to inform Errigo of the proper legal procedures used in the district court;³ and (3) Errigo's argument that the order violates his Fourth Amendment rights because the order has caused his possessions to be unlawfully detained from him.

Errigo also argues that the district court erred in excluding certain hearsay testimony contained in a police report concerning whether Thurgood struck Errigo. Without examining whether the district court erred in excluding the evidence, we conclude that even if the district court erred, the error was harmless. See State v. Evans, 2001 UT 22, ¶ 20, 20 P.3d 888 ("Harmless error is an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings."). Any error was harmless because, at the conclusion of the proceedings, the district court determined that it was irrelevant whether Thurgood struck Errigo first. Specifically, the court determined that Errigo simply could have left the residence instead of responding with increased physical violence. Based upon the evidence presented at trial, we cannot conclude that the district court's determination constituted an abuse of discretion. See Christiansen v. Farmers Ins. Exch., 2005 UT 21, ¶ 7, 116 P.3d 259 (stating that we review decisions concerning protective orders under an abuse of discretion standard).

Finally, Errigo argues in several different contexts that he should be entitled to return to the residence in question to

²The court notes, however, that this is a common practice in Utah. In fact, the Utah Rules of Civil Procedure require the inclusion of such information. See Utah R. Civ. P. 10(a)(3).

³The record reveals that the district court gave Errigo several opportunities to postpone the proceedings so he could consult with or retain counsel.

obtain property that is his. In support of his argument, Errigo attempts to include evidence not provided to the district court, such as a description of specific items remaining at the home and other information that has been developed since the last hearing in the district court. As explained above, this court cannot review this information because it was not included in the record. To the extent Errigo is basing his argument on facts contained in the record, he is also not entitled to relief from this court. The record reveals that prior to entry of the order in question, the district court allowed Errigo to go to the residence on two occasions to pick up his property. Errigo could not explain to the court what other items remained at the home or why he had not previously removed the items when permitted. As a result, we cannot conclude that the district court abused its discretion in restricting Errigo's access to the house.⁴ See id.

Accordingly, we affirm.

William A. Thorne Jr.,
Associate Presiding Judge

Russell W. Bench, Judge

Gregory K. Orme, Judge

⁴This court does not mean to imply that Errigo no longer has any remedy. For example, Errigo could potentially seek modification of the protective order under Utah Code section 78B-7-106(10). See Utah Code Ann. § 78B-7-106(10) (Supp. 2008) (stating a court may modify or vacate certain provisions of a protective order). Alternatively, Errigo could seek redress in a separate civil proceeding if he believes Thurgood is in wrongful possession of his property.