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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0157**

Shawdy Kiani, petitioner,
Appellant,

vs.

John Huha,
Respondent.

**Filed October 8, 2018
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CV-17-9003

Karmen McQuitty, University Student Legal Service, Minneapolis, Minnesota (for appellant)

Jason R. Vohnoutka, Vohnoutka Law Office, Ltd., Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Kalitowski, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

Self-described “sugar baby” Shawdy Kiani initiated a four-month sexual relationship with “sugar daddy” John Huha, exchanging “companionship” for lavishments. Kiani spurned Huha’s attempt to elevate the arrangement into a real romance, and the relationship ended. When Huha refused to remove from his social-media page photographs of Kiani and Huha as a couple and an image of Kiani’s text message describing herself as his “prostitute,” Kiani moved for a harassment restraining order claiming that she had been too intoxicated to consent and was therefore sexually assaulted during their first sexual rendezvous. The district court rejected Kiani’s sexual-assault claim as incredible and only partially granted her motion. Kiani argues that the district court was biased and erroneously found her incredible, erroneously admitted evidence, erroneously defined “sexual assault,” and erroneously decided that Huha’s social-media posting was not harassment. Because the district court was not biased and did not clearly err by rejecting Kiani’s sex-assault claim as a lie, because no erroneously admitted evidence prejudiced Kiani’s motion, because the definition of sexual assault was immaterial, and because the district court reasonably concluded that the posting was not harassment, we affirm.

FACTS

In early 2017, twenty-year-old Shawdy Kiani visited the “Seeking Arrangements” online service, where, according to Kiani, “You can find a ‘sugar daddy.’” The website promises a young woman (a “sugar baby”) the opportunity to meet an older man (a “sugar daddy”) for “companionship.” The district court described the resulting arrangement

candidly: “This ‘sugar baby – sugar daddy’ relationship is replete with euphemisms. In fact, realistically it is an exchange of primarily sexual services by the woman in return for large financial payments from the man.”

Kiani met John Huha, a man in his mid-thirties, through the website. The two began a sexual relationship that lasted roughly four months (but the precise length is unclear). An episode during their first sexual liaison is a central event in this appeal.

Kiani and Huha communicated online and by text messaging for several weeks before their first liaison. They arranged to meet for a weekend in Pittsburgh, where Huha lived, specifically to engage in sexual intercourse. Kiani flew to Pittsburgh on a Friday afternoon. She met Huha in person for the first time. The two engaged in sexual intercourse at least once that Friday and several times the next morning and afternoon before they went out to dinner. Kiani drank alcoholic beverages steadily over dinner, and, according to her, she became quite drunk.

Kiani claims to remember only returning to their hotel room that Saturday evening before vomiting and passing out. She says that the next thing she remembers is waking up Sunday morning in bed with Huha. She asked him if they had had sex after dinner, and Huha said they had. They ate brunch together. Later that day Kiani boarded her scheduled flight and returned to Minnesota.

The sugar baby – sugar daddy relationship continued for months. Within two weeks of the Pittsburgh encounter, Huha flew to Minneapolis to meet with Kiani. Then they met in Miami, and then in Minneapolis, and finally Ohio. The district court found that, during this period, Kiani perceived that Huha “wanted their relationship to become more

romantic” while Kiani “wanted to keep their relationship as it started—money from him in return for companionship and sex from her.” The disagreement came to a head during their Florida encounter, after which Kiani says she first tried to end the relationship. But she apparently had second thoughts, because the arrangement continued. Kiani wanted to impose some restrictions, however, so she told Huha expressly, “[I]f you want to see me like it has to be a real sugar baby/sugar daddy relationship, and so I said we can meet two weekends a month and then you would like help me out financially.” She then met with Huha again in Minnesota and Ohio. Huha funded all of their escapades, each involving sex.

Sometime after the Ohio trip, Huha posted photographs of himself and Kiani together on social media. The photographs are not sexually graphic; they are headshots of the two together, smiling, like a typical couple. But at some point the arrangement ended, and Kiani took issue with Huha’s characterization of it as typically romantic. Kiani sent Huha a text message complaining about the posted photos, adding, “I am not [your] ex.” When Huha responded asking Kiani what, then, she had been to him, Kiani replied, “Your prostitute.” Huha captured the image of this text-message exchange and added it to the photos on his Instagram profile.

Kiani demanded that Huha remove the post. He refused. During an angry text-message exchange over several days, Huha complained that he had given Kiani \$30,000 during their relationship, which the district court found to have been entirely “based upon consensual sex for financial reward.”

Kiani’s attorney sent Huha a letter demanding that he cease all contact with Kiani and remove all social-media posts depicting her. Huha again refused. Kiani petitioned for

an ex-parte harassment restraining order, asserting for the first time that Huha had sexually assaulted her during their initial encounter in Pittsburgh. She asked the district court to order Huha to remove the photographs. Relying only on Kiani's allegations, the district court issued a restraining order pending an evidentiary hearing.

Only Kiani testified at the hearing. She testified to the account just described and claimed that the Saturday-evening sexual encounter during the initial liaison constituted sexual assault. Over the objection of Kiani's attorney, Huha's attorney offered into evidence the demand letter in which Kiani complained about the social-media photographs but said nothing of any alleged assault.

The district court found that Kiani was generally not credible, that her assault allegation was particularly incredible, that no sexual assault occurred, and that Huha's posting of the photographs on Facebook did not constitute "harassment" under Minnesota Statutes, section 609.748 (2017). But the district court did find that the lengthy text-message exchange between the parties about the Instagram posting was "hostile in tone and somewhat threatening." It observed that neither party "expresses any desire to communicate with the other by any means" and that they live far apart in different states. It concluded that a "minor degree of harassment" in the text messages justified extending the restraining order two months, with no requirement to remove any internet post.

Kiani appeals.

DECISION

Kiani asks this court to order the district court to grant her motion for a two-year harassment restraining order, offering four arguments. She argues first that the district court

erroneously found her incredible. She argues second that the district court erroneously admitted her lawyer's cease-and-desist letter. She argues third that the district court erroneously defined the term "sexual assault" under Minnesota Statutes, section 609.748, subdivision 1(a)(1), and improperly applied that definition. And she argues fourth that the district court erroneously concluded that the social-media photographs did not constitute harassment. We address each argument.

I

Kiani first contends that the district court improperly concluded that her testimony lacked credibility. We review a district court's credibility determination for clear error. *See In re Estate of Torgersen*, 711 N.W.2d 545, 554 (Minn. App. 2006), *review denied* (Minn. June 20, 2006). In doing so, we accord the district court great deference. *See Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985); *see also* Minn. R. Civ. P. 52.01 (stating that appellate courts must give due regard to the district court's opportunity to assess witness credibility). As the supreme court has long established, "the trial court is in a far better position than we are to evaluate the various factors bearing on the credibility of the witnesses, such as their demeanor, disposition, and character." *Albertson v. Albertson*, 67 N.W.2d 463, 466 (Minn. 1954). We apply those principles here and have no difficulty affirming the district court's credibility determination.

In exceptional fashion, the district court thoroughly and reasonably explained its credibility determination based both on logic and witness demeanor. The district court observed, for example, that "[t]here was no corroboration at all" to support Kiani's claim of being sexually assaulted during the parties' first rendezvous. It considered that Kiani

only recently came to claim that the after-dinner sexual contact was an assault. It highlighted that she had never reported an assault to any authority. It recognized that she had never behaved as if the episode was an assault. The court said that it had observed Kiani's "demeanor and attitude carefully and listened to her testimony diligently, through both direct and cross examinations." Based on this, it found that "[h]er credibility was quite poor. Her testimony was vague, approaching flippant at times, and contained numerous evasions and omissions. She did not display great concern for factual truth overall. Significant events and actions were often bypassed or glossed over [Kiani] simply was not a credible witness." It reasoned that the only way to believe Kiani's claim that she was intoxicated and helpless would be to take her at her word, but it found that "[she] had little credibility overall, and less as to this claim." It concluded frankly, "Her testimony on the point was not believable." This vivid description by Referee Richard Trachy explaining why he was rejecting Kiani's allegation is a model of thoughtful scrutiny, and the district court's factually supported decision to disbelieve Kiani is therefore certainly not clearly erroneous.

Kiani would have us hold otherwise based on three theories: Kiani's testimony was not challenged by any other testimony; the district court referee was biased against Kiani; and the credibility determination is logically inconsistent with the district court's two-month restraining-order extension. None of these theories is convincing.

We reject Kiani's contention that the district court clearly erred by finding her incredible on the theory that, as the sole witness, Kiani *must* be believed. A district court sitting as fact-finder "is the sole judge of the credibility of witnesses and may accept all or

only part of any witness'[s] testimony.” *Roy Matson Truck Lines, Inc. v. Michelin Tire Corp.*, 277 N.W.2d 361, 362 (Minn. 1979). The fact-finder “is not compelled to believe any witness merely because [her] testimony is uncontradicted.” *Costello v. Johnson*, 121 N.W.2d 70, 76 (Minn. 1963). Kiani bases her assertion that the district court was bound to believe her claim on a legal proposition stated in *Haller v. N. Pump Co.*, 8 N.W.2d 464, 465 (Minn. 1943). The *Haller* proposition supports rather than opposes the district court’s credibility assessment: “The rule is well established that the trier of fact must accept as true the positive, unimpeached testimony of *credible* witnesses, *unless* the same is inherently improbable or rendered so by facts and circumstances disclosed at the hearing.” *Id.* (emphasis added and quotation omitted). The district court expressly found that Kiani was not a credible witness, and it also implicitly found that her assault testimony was inherently improbable based on the facts she disclosed at the hearing. Her argument that the district court was bound to accept her testimony as true lacks any legal support or logical force.

We also reject Kiani’s theory that the district court’s credibility finding is infirm due to the referee’s alleged bias. It is true that “[a] judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.” Minn. Code Jud. Conduct Rule 2.3(B). Kiani maintains that the referee’s bias was manifested in the referee’s words because he interrupted her testimony and stated, “I’m sorry, I’m having a little trouble understanding you. If you could try . . . to speak either a little louder or a little slower. . . . There is a slight accent. Try again.” Kiani labels these comments “microaggressions,” which, she proclaims, “have no place in our justice system.” Kiani does not define the term “microaggression.” The term does not appear in any Minnesota statute or rule of court, any

published or unpublished Minnesota appellate decision, or any federal appellate decision, so it carries no established meaning in law. According to Scott O. Lilienfeld, *Microaggressions: Strong Claims, Inadequate Evidence*, 12 Perspectives on Psychological Science, 138, 141 (2017), “[t]he term *microaggression* was coined by Harvard University psychiatrist Chester Pierce in 1970 to describe seemingly minor but damaging put-downs and indignities” based on ethnicity. Lilienfeld explains that a “microaggression” is, by definition, one of several “indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults.” *Id.* (quotation omitted). The term “began to filter into the academic mainstream” in 2007. *Id.* At that time, Professor Derald Wing Sue had similarly described the “nature of microaggressions” as “often unintentional and unconscious.” Derald Wing Sue, et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, American Psychologist, 271, 280 (May–June 2007). A judge who calls attention to his difficulty comprehending a litigant’s testimony because of the dialect, speed, or volume of the litigant’s speech has not expressed a hostile, derogatory, or negative racial slight or insult against the litigant unless the judge intends the remarks to constitute a racial slight or insult. Merely labeling the request with the nebulous term “microaggression,” which can involve purely unintentional communication, adds nothing to Kiani’s unsupported accusation of bias. And nothing in the record hints that the referee’s comments veiled some sort of ethnic or other partiality against Kiani. We hold that the referee’s comments fall far short of manifesting bias.

We last reject Kiani’s theory that the district court’s credibility finding is clearly erroneous based on the court’s extending the restraining order for two months. According

to Kiani, that extension is logically inconsistent with the finding that she lacked credibility. The argument fails. A district court may issue a harassment restraining order for a fixed period if it “finds reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subds. 4(b), 5(b)(3). The district court found that the angry text-message exchange between Huha and Kiani reflected “some minor degree” of harassment, and it based the extension on that fact alone, not on Kiani’s dubious accusation that Huha once sexually assaulted her. The district court’s credibility finding is not inconsistent with its harassment finding.

II

Kiani next argues that the district court improperly admitted into evidence the letter her attorney wrote to Huha demanding he remove photographs of Kiani from his social-media page. We will not reverse a district court’s evidentiary ruling absent a clear abuse of discretion. *State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013). Kiani objected to the letter’s admission for lack of foundation. She argues on appeal that foundation was lacking in that the district court never established that she had personal knowledge of the letter’s contents under Minnesota Rule of Evidence 602 until after her attorney sent it. Kiani adds two arguments never presented to the district court, which are that admitting the letter into evidence was an abuse of discretion under Minnesota Rule of Evidence 408 because the letter reflected an attempt to settle a dispute, and it was an abuse of discretion under rule 403 because the letter included unfairly prejudicial material.

We reject as forfeited Kiani's arguments under rules 408 and 403, because they were neither presented to nor considered by the district court. See *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). We address only her argument under rule 602.

Kiani's argument under rule 602 that the letter lacked foundation absent Kiani's personal knowledge of its contents has some weight, but it too fails. Huha recognizes that he offered the letter only to undermine Kiani's claim that she was sexually assaulted, "given that there was no mention of any such conduct or claim in the letter." So the letter was relevant only if Kiani knew the letter's contents before her attorney sent it, and the only way to find that she knew its contents is by inference. We need not decide whether the record supports this inference, however, because, even if it does not, we would not reverse. We will reverse an erroneous evidentiary ruling only if the error prejudiced the objecting party. *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). "An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial." *Id.* This case was presented to a judicial referee, not a jury, and so any prejudice stemming from erroneously admitted evidence would be minimal. See *State v. Burrell*, 772 N.W.2d 459, 467 (Minn. 2009). And although Kiani asserts that the district court "heavily relied" on the letter to find that no sexual assault occurred, the order indicates otherwise. It references the letter seemingly as an afterthought, stating, "Even a demand letter sent to [Huha] on behalf of [Kiani] fails to mention this claim." The order demonstrates that the district court found Kiani's assault allegation incredible on numerous grounds and not substantially on the letter. We hold that any error in admitting the letter had no impact on the outcome and was therefore harmless.

III

Kiani next argues that the district court misinterpreted the phrase “sexual assault” under the harassment statute, which authorizes a restraining order for even “a single incident of physical or sexual assault,” among other grounds. Minn. Stat. § 609.748, subd. 1(a)(1). We need not consider this argument because the district court disbelieved Kiani’s factual allegation that she was mentally impaired, mentally incapacitated, or physically helpless during the Saturday evening of her first sexual episode with Huha, and this alleged incapacitation was the sole factual basis for Kiani’s claim of assault. The district court therefore would not have further extended the restraining order under any definition of sexual assault.

IV

Kiani argues finally that Huha’s posting of the photographs on social media constituted harassment. Harassment includes “repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another.” Minn. Stat. § 609.748, subd. 1(a)(1). “[W]hether certain conduct constitutes harassment may be judged from both an objective standard, when assessing the effect the conduct has on the typical victim, and a subjective standard, to the extent the court may determine the harasser’s intent.” *Kush v. Mathison*, 683 N.W.2d 841, 845 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2006). We review the district court’s determination that the photographs did not constitute harassment for an abuse of discretion. *Id.* at 843.

Kiani cites no published opinion to support her proposition that Huha’s posting of the apparently inoffensive headshots of Kiani and Huha posing together constitutes harassment. She argues vaguely that the posting of the photographs, “in conjunction with other contacts,” constitutes harassment. But the district court remedied the mildly harassing “other contacts” by restraining Huha from contacting Kiani for two months. Kiani argues that the photographs separately constitute harassment because they “were damaging to [her] relationships with her family and substantially interfered with her privacy.” She does not explain how the photographs damaged her relationship with anyone or otherwise interfered with her privacy. The photographs imply only that she and Huha were once a couple. And although the image of Kiani’s text message describing herself as Huha’s “prostitute” may be embarrassing, she fails to establish that the harassment statute, in the context of the First Amendment, authorizes the district court to prevent damaging or embarrassing self descriptions from being publicly disclosed. Kiani does not convince us to overturn the district court’s finding that “[n]othing about [the photos’ placement on Huha’s Instagram profile] created a substantial adverse effect upon [Kiani’s] safety, security or privacy.” We add that, even if the photographs constituted harassment, the statute merely permits—not mandates—the district court to issue a restraining order. Minn. Stat. § 609.748, subd. 5(a) (“The court *may* issue a restraining order” (emphasis added)). We need not reverse the district court and remand for it to determine whether, in its discretion, to issue a restraining order, because we hold that it did not abuse its discretion by deciding that the posting does not constitute harassment.

Affirmed.