

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0922**

In the Matter of:
Carole Anne Rosemary Dobson,
Respondent,

vs.

Ryan Leon Solee,
Appellant.

**Filed April 29, 2019
Affirmed
Cochran, Judge**

Clearwater County District Court
File No. 15-FA-18-162

Carole Anne Rosemary Dobson, Clearbrook, Minnesota (pro se respondent)

Jason Steck, Law Office of Jason Steck, Edina, Minnesota; and

Richard C. Mollin, Gonvick, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Hooten, Judge; and Cochran,
Judge.

U N P U B L I S H E D O P I N I O N

COCHRAN, Judge

Appellant Ryan Leon Solee challenges the district court's issuance of an order for protection (OFP) requested by Solee's former wife, respondent Carol Anne Rosemary Dobson. This OFP was the second OFP that Solee's former wife obtained against Solee.

Solee argues that the district court abused its discretion by excluding video evidence at the OFP hearing and by taking judicial notice of a provision in the parties' divorce decree. Solee also argues that the district court's conduct at the OFP hearing denied him due process of law. We affirm.

FACTS

In 2017, Solee and Dobson divorced. The divorce decree granted possession of the parties' marital house in Clearbrook, Minnesota to Dobson. Prior to their divorce, Dobson obtained an OFP against Solee. That OFP expired on April 1, 2018.

On April 3, 2018, two days later, Solee entered the marital house. Dobson was not there at the time. Police Chief Dan Gazelka, a friend of Solee's, accompanied Solee. Gazelka used a body camera to take a video of Solee entering the house. While in the house, Solee changed the locks. After doing so, Solee contacted Dobson's brother and informed him that he had moved into the house and changed the locks.

On April 4, 2018, Dobson petitioned the district court for a new OFP based on Solee's entry into the house. Dobson indicated in the petition that Solee broke into her house while she was at work, changed the locks, and removed her belongings. Dobson stated that Solee did not have a key. Dobson also stated that she was scared of Solee and would not return to the house because she feared him. In the petition, she also described previous abuse that Solee committed against her.

The district court held a contested hearing on the OFP petition. Both Dobson and Solee appeared pro se.

Dobson testified first. She explained that she learned that Solee entered the house from her brother. She testified that she did not know how Solee gained entry because she had changed the locks after Solee moved out. She also indicated that she was still residing at the house but also lived part-time with her brother in Bemidji, where she was working. She testified that she had not gone to the house after learning that Solee was there because she did not want to be near him. Additionally, Dobson described previous instances of physical abuse that Solee committed against her, including an incident in which Solee choked Dobson while she was in bed.

Solee called five witnesses, including himself. Three witnesses testified primarily about Dobson's living arrangements. Solee's father testified that he heard through Dobson's son that Dobson had moved in with her brother. An acquaintance of Dobson's brother testified that she heard from Dobson's brother that Dobson planned to move out of the house and that Dobson was living with her brother in the interim. The city clerk treasurer testified that Dobson had requested that the city turn off the utilities at the house and told the clerk to let Solee know.

Solee also called Chief Gazelka. Gazelka testified that the city clerk asked him to tell Solee about Dobson's request to turn off the utilities. Gazelka testified that he went with Solee to the house on April 3, 2018 and recorded the entry on video. Before Solee offered the video, the district court interrupted Gazelka's testimony and ruled that the video was irrelevant. The district court indicated that evidence regarding whether the house was vacant when Solee entered—including the video of Solee entering the house—was irrelevant.

Solee testified last. He admitted that he entered the house and changed the locks. He testified that he entered the house because he was concerned that the pipes in the house would freeze after Dobson stopped paying the utilities. Solee claimed that when he entered the house, he did not understand that he did not have a right to enter. He further testified that he thought he could live in the house because he was under the impression that Dobson had moved out. But, he agreed that the divorce decree gave possession of the house to Dobson and he had no right to enter it. Solee also testified that he entered the house using the original key to the house (contradicting Dobson's testimony that she had changed the locks after Solee moved out) and that the house appeared to be empty. He indicated that the video that the court excluded would show him using a key to enter and would also show that the house was vacant.

The district court questioned both parties during their testimony, but questioned Solee more extensively. Some of the district court's questioning merely clarified Solee's testimony and maintained focus on the relevant issues. In other instances, the district court asked Solee pointed, leading questions. The district court also interrupted both parties throughout the hearing to enforce rules of evidence, to question witnesses, and to explain its evidentiary rulings to the parties. During the hearing, the district court took judicial notice that the divorce decree granted Dobson sole possession of the house even though the parties owned the house as tenants in common.

After both parties rested and testimony concluded, Solee mentioned in his closing argument that he was a part-time police officer. The district court made remarks to Solee

about his occupation and his understanding of domestic violence, and implied that Solee should have known better than to enter Dobson's residence because he was a police officer.

The district court did not find credible Solee's testimony that he believed he had a right to enter the residence. The court indicated at the close of the hearing that Solee "knew who had possession" because he "negotiated that through [his] attorney" in the dissolution. The district court also declared, "I don't believe you had a key. I don't know how you got in there. But, you knew you didn't have a possessory interest." The district court granted the OFP after asking Dobson whether she still wanted the order.

The district court filed a written order granting the OFP. The written order indicated that "[Dobson] had an order for protection against [Solee] which expired on 4/1/18. On 4/3/18 [Solee] broke into [Dobson's] residence and changed the locks preventing [Dobson] from returning to her home." The district court further found that Dobson reasonably feared physical harm from Solee. Finally, the district court made an additional finding that "the property [Solee] broke into was decreed to both parties in the dissolution action as tenants in common but [Dobson] was granted possession of said property prior to its sale."

Solee retained an attorney and brought a motion to reconsider on May 2, 2018. In his motion, Solee asked the district court to vacate the OFP, permit a new hearing, and accept an offer of proof of the video recording made by Gazelka. In support of the motion, Solee submitted an affidavit from Gazelka in which Gazelka stated that the body camera video that he took shows Solee entered the house using a key and the house was empty except for a few items of furniture. The district court denied Solee's motion.

Solee appeals.

DECISION

Solee argues that the district court abused its discretion by excluding the video taken by Gazelka and by taking judicial notice of facts not in the record. Solee also argues that the district court denied him the due process afforded by the United States Constitution. We address each issue in turn.¹

I. The district court properly exercised its discretion when it excluded the video evidence.

Solee contends that the district court abused its discretion when it excluded the video of him entering the house for lack of relevancy. “Evidentiary rulings concerning materiality, foundation, remoteness, relevancy, or the cumulative nature of the evidence are within the [district] court’s sound discretion and will only be reversed when that discretion has been clearly abused.” *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994) (quotation omitted). A party challenging an evidentiary ruling made in an OFP hearing “must demonstrate prejudicial error to be entitled to a new trial or hearing.” *Olson on behalf of A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017) (quotation omitted).

¹ Though the OFP at issue here has expired, we note that this appeal is not moot because of the collateral consequences that attach to an OFP. Specifically, if another OFP is granted against Solee, it could be in effect for up to 50 years based on the fact that Dobson has had two or more OFPs in effect against Solee. See Minn. Stat. § 518B.01, subd. 6a(c)(2) (2018) (providing that a court may grant a subsequent OFP for a period of up to 50 years if the court finds that “the petitioner has had two or more orders for protection in effect against the same respondent”); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (concluding that the appeal of an expired OFP was not moot considering the collateral consequences of an OFP, including the extension of an OFP and the issuance of a subsequent OFP).

Evidence is relevant if it has a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. “The fact to be established need not be an ultimate fact or a vital fact. It need only be a fact that is of some consequence to the disposition of the litigation.” Minn. R. Evid. 401 1977 comm. cmt. Evidence is relevant if it “logically tends to prove or disprove a material fact in issue.” *Boland v. Morrill*, 132 N.W.2d 711, 719 (Minn. 1965). “[A]ll relevant evidence is presumptively admissible unless exclusion is mandated by other controlling law.” *Kalia v. St. Cloud State Univ.*, 539 N.W.2d 828, 833 (Minn. App. 1995); *see also* Minn. R. Evid. 402 (providing that relevant evidence is generally admissible unless other law establishes inadmissibility).

Solee maintains that the body camera video was relevant to (1) whether he used a key to enter the residence, (2) whether the house was vacant, and (3) Dobson’s credibility. Solee argues that the exclusion of the evidence was prejudicial because the district court based its decision to grant the OFP, in part, on a finding that Solee did not have a key. We are not persuaded.

Because Dobson had a prior expired OFP against Solee, the district court had the authority to grant a new OFP upon a showing that Dobson was “reasonably in fear of physical harm from” Solee. Minn. Stat. § 518B.01, subd. 6a(b)(2) (2018). Thus, the issue to be decided by the district court at the OFP hearing was whether Dobson reasonably feared harm from Solee. In reaching its decision, the district court focused on the fact that Solee entered the house when he did not have a right to do so—not on how he entered. The district court also based its decision on the fact that Solee changed the locks after entering,

thereby preventing Dobson from entering her own home. At the conclusion of the OFP hearing, the district court told Solee:

And being a [p]olice [o]fficer I am shocked that you would make those decisions to just go and I know you think it's your house, or whatever. But, you knew who had possession. You negotiated that through your attorney, you knew who had possession, okay. And I can only tell you that if you don't know how terrifying it would be if someone went into my home, I don't care my ex-wife, whoever it was, that is a place where I am supposed to feel safe and they just took it over. When the [c]ourt says she has possession of it. You knew that.

As this passage indicates, the district court did not base its decision to grant the OFP on whether Solee used a key to enter the house. *See* Minn. R. Civ. P. 52.01 (noting that a district court may recite findings of fact and conclusions of law orally after the close of evidence). And, although the district court expressed disbelief as to Solee's statement that he used an original key to enter the house, it was Solee's entry into the home when he lacked a right to do so and the changing of the locks that was determinative in the court's analysis. The district court's denial of Solee's motion to reconsider and accept an offer of proof of the video further demonstrates that the district court ultimately determined that Solee's method of entry did not influence its decision to issue the OFP.

The district court did not abuse its discretion by excluding the video. The evidence that Solee entered the house and changed the locks, considered in light of the previous abuse that Solee committed, was sufficient to support the district court's finding that Dobson reasonably feared physical harm from Solee. Whether Solee entered using an original key to the property was not a material fact at issue because Dobson's fear was reasonable whether Solee entered with an original key or not. Evidence that tended to

prove how Solee entered the house was not relevant under these circumstances. Accordingly, we conclude that the district court acted within its discretion when it excluded the video evidence purportedly showing Solee entering with a key for lack of relevancy.

At the OFP hearing, the district court also determined that the video was not admissible to show that the house was vacant because that fact was not relevant to whether Dobson reasonably feared Solee. We agree with the district court's conclusion. Dobson had the right to possess the house, and Solee interfered with that right by entering the house and changing the locks. In light of the prior abuse, Solee's acts caused Dobson to reasonably fear physical harm from Solee. That fear resulted because Solee entered the house when he had no right to do so regardless of whether it was vacant. As a result of Solee's actions, Dobson did not return to the house because she was afraid that he would be there. The district court did not clearly abuse its discretion in excluding evidence to prove whether the house was vacant at the time Solee entered.

Even if the video was relevant to showing either that Solee entered with an original key or that the house was vacant when he entered, we conclude that Solee has not demonstrated that the exclusion of the video was prejudicial. "An evidentiary error is prejudicial if it might reasonably have influenced the fact-finder and changed the result of the proceeding." *Olson*, 892 N.W.2d at 842. As stated above, the most important considerations in issuing the OFP were that Solee entered the house and changed the locks without the right to do so. Based on these facts, and considering past abuse, the district court found that Dobson reasonably feared Solee. Considering the district court's statements at the hearing and the findings included in the OFP itself, we conclude that the

video would not have changed the result of the hearing and that the district court would have issued the OFP even if Solee proved that he entered the house using an original key and knowing that the house was vacant. Based on our review of the record, we determine that there is not a reasonable likelihood that the outcome of the hearing would have been different had the district court received the video.

Finally, Solee argues that the video was relevant to impeach Dobson's credibility because it would contradict Dobson's testimony that she lived in the residence and that she changed the locks after Solee moved out. Dobson's credibility was a material issue. But the video would not have demonstrated that either aspect of Dobson's testimony was untrue. The video would have showed that the house was barren, not that Dobson had stopped living there.² The video would have showed Solee entering with a key, but the only evidence that it was Solee's original key was Solee's own testimony, which the district court heard. More importantly, neither of these facts were ultimately relevant or material to the district court's decision to issue the OFP. The district court's finding that Dobson reasonably feared harm from Solee was supported by the evidence that Solee entered the house and changed the locks and the evidence of prior abuse. Accordingly, we conclude that the district court acted within its discretion when it excluded the video evidence and that there was no resulting prejudice to Solee.

² Gazelka's affidavit indicated that the video would show that the house was empty "except for two or three chairs in the kitchen" and a "bare mattress in one of the bedrooms." The cupboards and cabinets had been "cleaned out."

II. The district court acted within its discretion when it took judicial notice of provisions in the parties' divorce decree.

Solee contends that the district court abused its discretion by taking judicial notice of the parties' divorce decree—specifically, that the decree gave possession of the house to Dobson. He argues that the district court misinterpreted the divorce decree because the divorce decree did not expressly bar him from the house. Solee also maintains that Dobson violated the divorce decree by turning off the utilities, thereby failing to pay the normal maintenance as required by the decree.³

We review a district court's decision to take judicial notice of facts for an abuse of discretion. *See In re Zemple*, 489 N.W.2d 818, 820 (Minn. App. 1992). A court may take judicial notice of a fact not subject to reasonable dispute that is capable of accurate and ready determination by resort to sources whose accuracy cannot be questioned. Minn. R. Evid. 201(b). A court is permitted to take judicial notice of its own records. *In re Welfare of Clausen*, 289 N.W.2d 153, 157 (Minn. 1980). Because the district court is permitted to take judicial notice of its own records, we conclude that the district court did not abuse its discretion in taking judicial notice of the provision of the divorce decree that granted possession of the house to Dobson.

Solee's other arguments regarding the divorce decree also lack merit. Though Solee argues that the divorce decree did not expressly prohibit him from going to the house, he agreed at the OFP hearing that Dobson had sole possession of the house and that he had no right to enter the house. Despite his knowledge of these facts, Solee entered the house

³ The divorce decree is not in the record.

without Dobson's permission or awareness two days after the first OFP expired and changed the locks. Finally, whether Dobson violated a provision of the divorce decree regarding the payment of utility bills is irrelevant to whether Solee caused Dobson to fear harm from him. The district court's interpretation of the divorce decree was not challenged at the OFP hearing, and we conclude that the provisions of the decree (or lack of provisions) that Solee cites on appeal do not alter the district court's reasoning that Solee was not permitted to enter the house and change the locks. We find no abuse of discretion under these circumstances.

III. The district court did not deprive Solee of his right to due process.

Solee argues that the district court deprived him of the right to an impartial and disinterested tribunal in violation of the Due Process Clause of the United States Constitution. He argues that the district court's conduct at the hearing demonstrated that it had preconceived notions of the evidence and that the district court's evidentiary rulings precluded him from contradicting those notions. Citing *Hansen v. St. Paul City Ry. Co.*, 43 N.W.2d 260, 264 (Minn. 1950), he argues that the district court's questioning and comments demonstrated that the district court improperly took on the role of an advocate. Finally, he argues that the district court held Solee to an "elevated standard" because Solee was a police officer. We are not persuaded.

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980). The presence of a biased judge acting as a fact-finder is a structural error that deprives a litigant of his right to a fair trial. *State v. Dorsey*, 701 N.W.2d 238,

252-53 (Minn. 2005). The lack of an impartial judge requires automatic reversal. *Id.* at 253. We review de novo whether a defendant has been denied the constitutional right to an impartial finder of fact. *Id.* at 249.

A judge is presumed to be impartial and approach the case with a “neutral and objective disposition.” *Troxel v. State*, 875 N.W.2d 302, 314 (Minn. 2016) (quotation omitted). The presumption may be rebutted by evidence of “favoritism or antagonism.” *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). The judge’s conduct must be fair to both sides. *Dorsey*, 701 N.W.2d at 250. But “[b]ias or prejudice, to be disqualifying, must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his participation in the case.” *In re Estate of Lange*, 398 N.W.2d 569, 573 (Minn. App. 1986) (citing *Berger v. United States*, 255 U.S. 22, 31-35, 41 S. Ct. 230, 232-33 (1921)).

There is no evidence that the district court had any preconceptions of the merits of the case derived from outside sources. While the district court often interrupted Solee’s attempts to introduce evidence or testify, a significant number of those interruptions were merely to clarify Solee’s testimony and maintain focus on relevant issues. Moreover, the district court also interrupted Dobson’s testimony and cross-examination. Because the record demonstrates neither that Solee overcame the presumption that the judge was impartial nor that the judge was, in fact, biased against Solee, we conclude that Solee was not denied the right to a fair and impartial tribunal.

A new trial is also warranted when the district court “departs from the standards of judicial impartiality and prejudices the losing party’s rights.” *State v. Erickson*, 610

N.W.2d 335, 341 (Minn. 2000) (citing *Hansen*, 43 N.W.2d at 265). In *Hansen*, the supreme court concluded that a new trial was required due to the “gratuitous observations, remarks, and reprimands of the trial court” that “prejudiced defendants’ case and deprived them of a fair trial.” 43 N.W.2d at 262. The conduct in *Hansen* was in the presence of a jury, and the district court frequently interjected during testimony to make comments about the evidence and chastise the defense attorney. *Id.* at 262-64.

There is, however, an “appropriate reduction in concern” for the district court’s tone and the content of its questions in a bench trial. *In re Welfare of D.J.N.*, 568 N.W.2d 170, 176 (Minn. App. 1997) (citing *Block v. Target Stores, Inc.*, 458 N.W.2d 705, 712-13 (Minn. App. 1990) (criticizing trial judge for lengthy and sarcastic questioning of a witness especially because of the possible effect on the jury’s view of the case), *review denied* (Minn. Sept. 28, 1990)). In a bench trial, “sharp and argumentative” questioning by the district court can be tolerated, and the district court “may have not only the right but the duty to interrogate a witness” if the court is doubtful about the witness’s testimony. *Olson v. Blue Cross & Blue Shield*, 269 N.W.2d 697, 702 (Minn. 1978); *see also* Minn. R. Evid. 614 (permitting the court to call and interrogate witnesses).

Even if a district court makes inappropriate comments, however, “appellate courts will not intervene unless the comments were prejudicial, biased or deprived [a party] of their right to a fair trial.” *D.J.N.*, 568 N.W.2d at 176 (quotation omitted).

Solee’s argument that the district court denied him an impartial hearing through its evidentiary rulings fails. As discussed above, the district court did not abuse its discretion

in excluding the video evidence or taking judicial notice of the divorce decree. These evidentiary rulings did not violate Solee's right to due process.

Solee's argument that the district court's confrontational and narrow questioning deprived him of due process also fails. The district court questioned both parties, primarily to guide the testimony to relevant issues and clarify the narrative testimony of two pro se litigants. We agree that the district court's questioning of Solee was sharp and argumentative at times. But the sharp questioning occurred after Solee had admitted that he entered the house without Dobson's knowledge or consent. This was a hearing before a judge, not a jury, and the district court was permitted, if not required, to question a witness if it had doubts about the witness's testimony. *Olson*, 269 N.W.2d at 702.

Finally, Solee argues that the district court held "Solee to an elevated standard due to his background as a police officer." Though the district court made remarks regarding Solee's position as a police officer, we find nothing in the record to support that the district court held Solee to an "elevated standard" when determining whether Dobson reasonably feared Solee based on his actions. We find no basis in the record to conclude that the district court's conduct departed from the standards of impartiality and prejudiced Solee's rights.

Affirmed.