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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1413**

In the Matter of: Myrna Wati Ali, petitioner,
Respondent,

vs.

Yusuf Haji-Ismail Ali,
Appellant.

**Filed May 6, 2019
Affirmed
Peterson, Judge***

Scott County District Court
File No. 70-FA-17-4878

Amy Edwall, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for respondent)

Yusaf Haji-Ismail Ali (pro se appellant)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Peterson, Judge.

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal involving an order for protection (OFP), appellant challenges (1) an order that extends the OFP for one year and (2) an order that denied his motions for a change of venue and a new trial. We affirm.

FACTS

Appellant Yusuf Haji-Ismail Ali and respondent Myrna Wati Ali married in April 2008 and have two children. On March 14, 2017, Myrna petitioned the district court for an OFP against Yusuf, on behalf of herself and the children. In her petition, Myrna alleged that Yusuf physically and verbally abused her during their marriage. The district court issued a temporary ex parte OFP for the protection of Myrna, but not the children.

Following an evidentiary hearing on the petition, the district court found that Yusuf committed domestic abuse against Myrna on two occasions. The district court issued an OFP for the protection of Myrna for one year, beginning on April 14, 2017. The OFP ordered Yusuf to refrain from “harassing, stalking, or threatening [Myrna], or engaging in other conduct that would place [Myrna] in reasonable fear of bodily injury.”

On March 15, 2018, Myrna applied for an extension of the OFP. Her application alleged that Yusuf violated the OFP by following her on two occasions, taking her photograph, and “call[ing] police on [her] more than 20 times in 2017.” At the evidentiary hearing on the application, Myrna offered into evidence the police reports from the two incidents when Yusuf followed her. The district court asked Yusuf if he objected to the police reports being admitted into evidence, and Yusuf responded, “Not at all, Your

Honor.” After Myrna testified about the two incidents, Yusuf sought to introduce 23 police reports that related to a third party; he did not explain how the reports related to Myrna’s application to extend the OFP. The district court declined to review or admit the police reports, and Yusuf testified about the two incidents that Myrna alleged violated the OFP.

On May 15, 2018, the district court issued an order that extended the OFP for one year. The court found that Yusuf violated the OFP on two occasions and that Myrna “continues to be afraid of [Yusuf] and fear for her life.” The district court specifically found that Myrna’s testimony was credible and Yusuf’s testimony was not credible.

While the district court had Myrna’s application for extension under advisement, Yusuf filed a motion requesting a change of venue. He asserted that he did not believe he could receive a fair hearing in Scott County. After the district court issued the order that extended the OFP, Yusuf filed a motion seeking a new trial. Following a hearing on Yusuf’s two motions, the district court denied both motions in a June 28, 2018 order.

Yusuf filed a notice of appeal, which this court construed as challenging the district court’s May 15, 2018 order extending the OFP and the June 28, 2018 order denying Yusuf’s motions for a change of venue and a new trial.

D E C I S I O N

Extension of OFP

Yusuf argues that the district court erred by extending the OFP. He contends that Myrna was lying when she testified at the evidentiary hearing on the extension and that the

district court should not have admitted the police reports Myrna offered into evidence while excluding the police reports that he offered.¹

“Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection.” Minn. Stat. § 518B.01, subd. 6a(a) (2018). The terms of an existing OFP may be extended upon a showing that: “(1) the respondent has violated a prior or existing order for protection,” or “(2) the petitioner is reasonably in fear of physical harm from the respondent.” *Id.*, subd. 6a(b)(1), (2).

A district court’s decision to extend the terms of an existing OFP is reviewed for an abuse of discretion. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018); *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). A district court abuses its discretion “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Thompson*, 906 N.W.2d at 500 (quotation omitted). This court reviews a district court’s findings for clear error and views the evidence in the light most favorable to the district court’s decision. *Ekman*, 812 N.W.2d at 895.

Violations of OFP and Reasonable Fear of Physical Harm

At the evidentiary hearing on her application to extend the OFP, Myrna offered two police reports into evidence and testified about the incidents addressed in the reports. The first incident occurred at a park on May 2, 2017. Myrna testified that Yusuf followed her to the park after he saw her driving with their children. Yusuf disagreed with Myrna’s

¹ Much of Yusuf’s argument focuses on the validity of the original OFP, rather than the extension of the OFP. Yusuf’s appeal, however, is from the May 15, 2018 order that extends the OFP, and we are not reviewing the original OFP.

recollection of the incident and testified that it was merely a coincidence that they were at the park at the same time. The second incident occurred at a shopping mall on May 25, 2017. Myrna testified that Yusuf followed her in the mall, called the police, and took her photograph with his phone. Yusuf testified that he was at the mall at the same time as Myrna “by accident” and he recorded Myrna only after she started recording him. Myrna also testified that Yusuf called the police on her about 20 times in 2017, and none of the calls resulted in an arrest.

The district court implicitly found that each of the two incidents constituted a violation of the OFP and specifically found that Myrna’s testimony was credible and Yusuf’s testimony was not credible. Yusuf disputes the accuracy of Myrna’s testimony and claims that Myrna was “lying under oath.” But “[t]he district court is the exclusive judge of credibility.” *Id.*

The original OFP prohibited Yusuf from “harassing, stalking, or threatening [Myrna], or engaging in other conduct that would place [Myrna] in reasonable fear of bodily injury.” See *Black’s Law Dictionary* 831 (10th ed. 2014) (defining “harassment” as “[w]ords, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation”). Myrna’s testimony regarding the incidents sufficiently supports the district court’s finding that Yusuf violated the OFP on two occasions. Following Myrna to the park and at the mall was conduct that annoyed, alarmed, or caused substantial emotional distress to Myrna and served no legitimate purpose. The district court’s finding is not clearly erroneous.

The district court also found that Myrna “continues to be afraid of [Yusuf] and fear for her life.” Myrna testified that she was in “fear” of Yusuf, she felt “scared” when she saw him at the mall, and she “still feel[s] that he’s still controlling me.” The district court found Myrna’s testimony credible. A party “need not show actual physical harm or even imminent harm to obtain an extension of an OFP”; a party “need only show reasonable fear of physical harm.” *Ekman*, 812 N.W.2d at 895; *see* Minn. Stat. § 518B.01, subd. 6a(b). Myrna’s testimony about her past fear and Yusuf’s ongoing controlling behavior, when considered with Yusuf’s history of domestic abuse, sufficiently supports the district court’s finding. The district court did not clearly err by finding that Myrna “continues to be afraid of [Yusuf] and fear for her life.”

Evidentiary Rulings

Yusuf argues that the district court erred by extending the OFP based on the two police reports that were admitted into evidence, which he contends are hearsay. He also challenges the district court’s decision to exclude the 23 police reports that he offered into evidence. This court will not disturb a district court’s ruling on the admissibility of evidence unless it is based on an erroneous view of the law or is an abuse of discretion. *Aljubailah v. James*, 903 N.W.2d 638, 644 (Minn. App. 2017).

The Minnesota Rules of Evidence provide:

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) *Objection.* In case the ruling is one admitting evidence a timely objection or motion to strike appears of

record, stating the specific ground of objection, if the specific ground was not apparent from the context; or

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Minn. R. Evid. 103(a). Accordingly, Yusuf may not claim that the district court erred by basing its decision on improperly admitted police reports unless he shows that he objected when the district court admitted the police reports. When Myrna offered the two police reports as evidence, the district court asked Yusuf if he had seen the reports, and Yusuf responded, “I reported the incident, Your Honor, myself.” The district court then asked Yusuf if he had any objections to the police reports being accepted into the record, and Yusuf responded, “Not at all, Your Honor.” Because Yusuf did not object to admitting the police reports, he may not claim on appeal that the district court’s decision to extend the OFP was erroneous because the decision was based on the police reports. Furthermore, the district court clarified at a later hearing that it based its decision to extend the OFP “on the testimony that came from the witness stand from Ms. Ali,” and did not base its decision on the police reports.

Yusuf also argues that the district court erred by excluding the 23 police reports that he offered. During the evidentiary hearing, Yusuf and the district court had the following exchange:

District Court: Mr. Ali, do you wish to give any evidence or have any witnesses today?

Yusuf: Your Honor, I have 23 police incident reports.

District Court: Well, I'm not going to take all the police reports.

Yusuf: That's linked to Jason² and him coming to the police station, him accusing me of threatening her.

District Court: Okay. Well, [Myrna] just talked about the phone calls and you calling the police and things like that.

Yusuf: That was because of my fear because Jason was—is still—even though.

District Court: Okay. So do you want to testify or you don't want to testify?

Yusuf: I want to testify, Your Honor.

Error may be predicated upon a ruling excluding evidence only if the ruling affected a substantial right and “the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.” Minn. R. Evid. 103(a)(2). Even if we assume that Yusuf’s statement that the 23 police reports were “linked to Jason and him coming to the police station, him accusing me of threatening her” was sufficient to describe to the court the substance of the reports, Yusuf does not explain how the reports were relevant in determining whether to extend the OFP. “District courts have broad discretion to admit or exclude evidence on a number of grounds, including relevance.” *Rew v. Bergstrom*, 845 N.W.2d 764, 788 (Minn. 2014). It is not reversible error to exclude evidence that would not affect the district court’s decision to extend an

² Yusuf testified that he saw Jason, a nonparty in this case, with Myrna.

OFP. *See id.* The district court did not abuse its discretion when it excluded Yusuf’s police reports.

Change of Venue and New Trial

This court construed Yusuf’s appeal to be from the May 15, 2018 order extending the OFP and the June 28, 2018 order denying Yusuf’s motions for a change of venue and a new trial. We understand those two motions together to be a request for a new hearing on Myrna’s application to extend the OFP in a venue other than Scott County. The district court denied both motions after concluding that Yusuf “offered no compelling reasons” to grant the motions.

Yusuf argues that the district court erred in denying his motions “because of a judicial bias.” His argument, however, does not address any basis for a change of venue. *See, e.g.*, Minn. Stat. § 542.11(3) (2018) (stating that “[t]he venue of any civil action may be changed by order of the court . . . when an impartial trial cannot be had in the county wherein the action is pending”). Yusuf does not identify any reason why the district court should have concluded that Yusuf cannot receive an impartial hearing in Scott County. Instead, Yusuf cites events that occurred during the hearing on Myrna’s application to extend the OFP as evidence that the district court judge was biased.

To be disqualifying, a judge’s bias or prejudice “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). Prior adverse rulings in the case do not constitute bias. *Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 236-37 (Minn. App. 2005).

Yusuf's argument that the district court was biased is based on his dissatisfaction with the district court's rulings in the hearing that has already occurred; he does not identify any extrajudicial source of bias or prejudice. *See Lange*, 398 N.W.2d at 573. The district court's prior rulings do not demonstrate bias, and, even if Yusuf had shown that the district court judge who presided at the hearing should be removed for bias in any future hearing, that showing would not show that Yusuf could not receive an impartial hearing in front of a different judge in Scott County. The district court did not err when it denied Yusuf's motions for a change of venue and a new trial.

Affirmed.