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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2108**

Gabrielle Marie Geraci,
Appellant,

vs.

Jack Cyril Maxwell,
Respondent.

**Filed June 10, 2019
Affirmed
Slieter, Judge**

Ramsey County District Court
File No. 62-HR-CV-17-102

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Minnesota (for appellant)

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respondent)

Considered and decided by Connolly, Presiding Judge; Slieter, Judge; and Smith,
John P., Judge.*

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

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Gabrielle Marie Geraci challenges the district court's denial of a harassment restraining order (HRO) pursuant to Minn. Stat. § 609.748 (2018). Appellant alleges the district court abused its discretion by denying her request for an HRO because: (1) the district court relied on evidence about the parties' social relationship before and after the alleged sexual assault, and (2) the district court should have issued an HRO based on appellant's testimony. We affirm.

DECISION

On February 14, 2017, appellant filed an affidavit and petition for an HRO alleging an incident of sexual assault in October 2016 committed by respondent Jack Cyril Maxwell against her. The matter came before the district court for an evidentiary hearing. Nine witnesses testified and the district court received exhibits offered by respondent without objection. In its written order, the district court found a sexual assault did not occur and denied appellant's request for an HRO.

"Ultimately, the issuance of an HRO is reviewed for abuse of discretion." *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). "A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses." *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004); Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*,

589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). However, “[w]e will not reverse merely because we view the evidence differently.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Matters of conflicting testimony and credibility are exclusively the province of the fact-finder. *Id.*

I. The district court did not err as a matter of law in considering the parties’ social relationship before and after the October 2016 incident.

Appellant argues that the district court erred by admitting evidence related to her social relationship with respondent before and after the alleged sexual assault. Appellant’s argument derives from Minnesota’s statutory definition of consent. We are not persuaded that the district court improperly considered the parties’ social relationship.

First, appellant did not object to admission of the social-relationship evidence. A party’s failure to object to the admission of evidence, generally, constitutes forfeiture of any challenge to that evidence. *Helm v. El Rehbein & Son, Inc.*, 257 N.W.2d 584, 587 n.2 (Minn. 1977) (“Where allegedly improper or prejudicial evidence has been admitted without objection, a party may not object to its admissibility for the first time in a motion for a new trial or on appeal.”); *see also Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (recognizing that district courts possess broad discretion in admitting evidence). Additionally, appellant offered the social-relationship evidence through her own testimony, which allowed examination of the evidence by respondent. *See Busch v. Busch Const., Inc.*, 262 N.W.2d 377, 386-87 (Minn. 1977) (recognizing that a party may introduce similarly inadmissible evidence when the opposing party opened the door).

Second, the appellant's assertion that the social-relationship evidence considered by the district court violates Minn. Stat. § 609.341, subd. 4 (2018), is unavailing. Pursuant to Minn. Stat. § 609.748, subd. 5, a district court may issue an HRO when it finds reasonable grounds to believe a party engaged in an act of harassment. The statutory definition of harassment includes, among other things, "a single incident of physical or sexual assault." Minn. Stat. § 609.748, subd. 1(a)(1). Consent constitutes a defense to certain sexual assault offenses. *See generally* Minn. Stat. §§ 609.341-.345 (2018) (identifying forms of criminal sexual assault). The statutory definition of consent, relevant here, provides:

"Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

Minn. Stat. § 609.341, subd. 4(a). Appellant argues this statutory definition precludes admission of any evidence about the actor and complainant's social relationship. Though it is correct that section 609.341, subdivision 4(a), says that a current social relationship does not equal consent, neither the statute nor evidentiary rules exclude such evidence for other purposes.

Moreover, the district court did not improperly use the social-relationship evidence. The district court rejected the argument that appellant's continued contact with respondent undercut her sexual assault allegation. Instead, the district court explained: "[T]he question here is not what occurred before and after the October 2016 incident, the question is what occurred in the room between [appellant] and [respondent]. The circumstances as they

exist before and after the October 2016 incident can, however, inform credibility determinations.” Within this context, the district court used the social-relationship testimony to address credibility, which is proper. 98 C.J.S. *Witnesses* § 626 (2019) (“As a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his or her testimony.”); *see also Roy Matson Truck Lines, Inc. v. Michelin Tire Corp.*, 277 N.W.2d 361, 362 (Minn. 1979) (“The [district] court, sitting without a jury, is the sole judge of the credibility of witnesses and may accept all or only part of any witness’ testimony.”). Accordingly, appellant fails to show the district court improperly used the social-relationship evidence.¹ *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“It is well to bear in mind that on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. Not only that, but the burden of showing error rests upon the one who relies upon it.”).

II. The district court permissibly exercised its discretion by denying issuance of an HRO.

A district court’s decision to issue an HRO is a function of its discretionary authority. *Peterson*, 755 N.W.2d at 761. For a district court to properly issue an HRO it must find “reasonable grounds” to find the respondent engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3).

¹ Appellant also argues in her brief that the use of the parties’ social relationship violates the Minnesota Rape-Shield statute, Minn. Stat. § 609.347 (2018). Appellant did not raise this challenge to the district court. Therefore, the question is not properly before this court on appeal, and we decline to address it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Appellant, citing unpublished cases, argues the district court erred by not granting her an HRO. Unpublished cases are not binding authority. See Minn. Stat. § 480A.08, subd. 3 (2018). Upon inspection of the cases relied on by appellant, appellant's claim fails. Although appellant cites to cases in which this court affirmed issuances of an HRO based on one witness's testimony, both cases involved a district court finding that witness credible. Here, however, the district court credited testimony by witnesses contradicting appellant's sexual-assault allegation. These findings necessarily result in the district court not crediting appellant's allegation. See *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (noting that district court's findings "implicitly indicate[d]" that it found certain evidence credible).

The district court found appellant failed to establish reasonable grounds to find harassment occurred. In reaching this conclusion, the district court found credible the testimony of respondent, B.M., respondent's roommate, and C.D., a third party who walked appellant home following sexual contact between appellant and respondent. B.M. explained that he walked into the dorm room and observed appellant seem to get off respondent's lap as though he interrupted the two. B.M. reported this to E.A., another student at the parties' school, which the district court found also corroborated the statement. B.M. left the room to brush his teeth and observed, after returning to the room, appellant leave. Appellant contacted C.D. to walk her home. Both B.M. and C.D. stated appellant did not appear intoxicated, contrary to appellant's testimony. The district court also credited respondent's testimony that the parties engaged in consensual sexual activity in his dorm room.

This court cannot determine matters of fact because fact-finding, in this context, is solely a function of the district court. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (recognizing appellate courts defer to district court credibility determinations). After inspection of the record, we find the record sufficiently supports the district court's findings.²

Affirmed.

² Appellant draws on several secondary sources related to responses of sexual assault victims, and she argues the district court relied on common myths of their behavior. Appellant did not raise these issue before the district court. “[A] party cannot complain about a district court’s failure to rule in [their] favor when one of the reasons it did not do so is because that party failed to provide the district court with the evidence that would allow the district court to fully address the question.” *Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 243 (Minn. App. 2003), *review denied* (Minn. Nov. 25, 2003).