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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0657**

Catherine Marie Schaefer,  
Respondent,

vs.

Brock William Fredin,  
Appellant.

**Filed April 20, 2020  
Affirmed  
Bratvold, Judge**

Ramsey County District Court  
File No. 62-HR-CV-18-527

Peter R. Mayer, Dorsey & Whitney LLP, Minneapolis, Minnesota (for respondent)

Brock Fredin, Baldwin, Wisconsin (pro se appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Smith  
Tracy M., Judge.

**UNPUBLISHED OPINION**

**BRATVOLD**, Judge

Appellant challenges the district court's decision to grant respondent's petition for a 50-year harassment restraining order (HRO), arguing that the district court (1) lacked jurisdiction under the HRO statute because neither party resided in Minnesota at the time of the HRO petition, (2) erred in denying his notice to remove a judicial officer, and

(3) erred in applying collateral estoppel to determine that appellant had violated a previous HRO on two or more occasions. Appellant also raises constitutional arguments for the first time on appeal. We affirm.

## **FACTS**

Respondent Catherine Marie Schaefer was a graduate student at Pennsylvania State University when she first made contact with appellant Brock William Fredin on a dating website in January 2014. Schaefer and Fredin agreed to meet in person. After receiving “very odd texts” from Fredin, Schaefer sent him a message not to contact her again. Fredin and Schaefer did not meet in person until after Schaefer started legal proceedings in Minnesota to obtain an HRO.

Over several months following their initial contact, Fredin repeatedly contacted Schaefer by text message through various social media platforms, and wrote posts about her on several websites. Schaefer petitioned in Ramsey County seeking an HRO against Fredin, which the district court granted after an evidentiary hearing (2016 HRO, 62-HR-CV-16-411). The district court found that Schaefer told Fredin “that she did not want any contact,” but that Fredin “proceeded to contact [her] . . . knowing that she did not want any contact with him.” The order also found that “[t]he contact . . . was repeated, unwanted, and had the effect of having a substantial adverse effect on [Schaefer’s] security and privacy.” The district court ordered Fredin to not have any “direct or indirect contact” with Schaefer for two years and specified that no contact meant not contacting Schaefer “via electronic means such as email or social networking sites.”

After the 2016 HRO, Fredin indirectly contacted Schaefer in the following ways. First, on the same day the district court granted the 2016 HRO, Fredin contacted the St. Paul Police Department and met with an officer, alleging that Schaefer was stalking and harassing him. Second, Fredin “authored and posted a website” discussing the law firm representing Schaefer and including a link to Schaefer’s graduate-student profile. Third, Fredin filed a formal complaint against Schaefer with Pennsylvania State University’s Title IX office, alleging that Schaefer had stalked, harassed, and sexually exploited him, among other things. Fourth, Fredin emailed the head of Schaefer’s graduate program, raising allegations like those in his Title IX complaint. Finally, Fredin posted comments about Schaefer on social media websites.

In April 2017, Schaefer moved for an order for Fredin to show cause why the district court should not hold him in contempt for violating the 2016 HRO, submitting an affidavit describing Fredin’s conduct. The district court initially denied Schaefer’s motion, without prejudice, because of ongoing investigations by police and the university. When Schaefer renewed her motion in January 2018, the district court held an evidentiary hearing and received testimony from Schaefer and Fredin.

In a written order, the district court found that Fredin had violated the 2016 HRO in each of the ways summarized above and that he continued to violate the HRO by creating posts on specific websites that “remain[] accessible to the public at the present time” (May 2018 order). The district court ordered Fredin to submit an affidavit detailing his efforts to remove his posts about Schaefer. Fredin filed a notice of appeal from the May 2018 order, but his appeal was dismissed. (Order, Appeal No. A18--090, Aug. 21, 2018.)

On the day that Fredin's affidavit was due, his attorney wrote to the district court, stating that Fredin had removed all comments about Schaefer, except for those on one website, and that the attorney had advised Fredin not to submit an affidavit based on his Fifth Amendment right against self-incrimination.

The district court set a hearing for June 25, 2018, during which both parties agreed that the violations in the May 2018 order had resolved. But Schaefer raised two new issues, alleging that Fredin had committed a new violation of the 2016 HRO and she was entitled to a 50-year HRO. After hearing argument and receiving testimony on the new violation, the district court temporarily granted the HRO, continued the matter, and set an evidentiary hearing.

Schaefer filed her affidavit and petition for a 50-year HRO two days after the June 25 hearing (2018 HRO petition, 62-HR-CV-18-527).<sup>1</sup> Her petition described Fredin's violations of the 2016 HRO, and alleged that he "continues to falsely file court documents to draw me into further hearings, which have been dismissed." Schaefer requested an HRO of up to 50 years because Fredin had "violated a prior or existing restraining order between us on two or more occasions."

At the evidentiary hearing on July 9, 2018, Fredin's attorney appeared and represented him on the 2016 HRO; Fredin stated he was proceeding pro se in the 2018 HRO petition proceedings. The district court declined to take any testimony on the 2018 HRO petition because, on the day of the hearing, Fredin had filed a notice to remove the

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<sup>1</sup> Schaefer at first filed her 2018 HRO petition in the 2016 HRO file on June 22. After the June 25 hearing, Schaefer refiled it as a new matter on June 27, 2018.

presiding judicial officer, which the district court took under advisement. The district court heard arguments and received testimony from Fredin and Schaefer on her allegations that he had committed new violations of the 2016 HRO.

In a later written order, the district court denied Fredin's notice to remove on the 2018 HRO petition because his notice was untimely (July 2018 order). The 2018 HRO petition was set for an evidentiary hearing.

In a separate order, the district court determined that Fredin was in contempt of court for a new violation of the 2016 HRO (October 2018 order). The district court found that Fredin had filed a temporary restraining order (TRO) against Schaefer in Wisconsin and had "affirmatively and intentionally" provided "false and misleading" information to the Wisconsin court because he failed to disclose the 2016 HRO against him. The district court also found that Fredin omitted any information about the 2016 HRO "in an effort to ensure that he would at least get one (1) hearing whereby [Schaefer] would be forced to appear with [him] in Court." The district court found that Fredin's request for a TRO was "designed to thwart the very purpose of the 2016 HRO."

At a two-day evidentiary hearing on the 2018 HRO petition in November 2018, Schaefer submitted 12 exhibits and Schaefer and Fredin testified, as did Fredin's brother. Schaefer testified to the events described above. She also testified that she needed an HRO because she does not "feel like [she is] safe from [Fredin]." Fredin testified that he did not intend to harass Schaefer, he had stood her up on a date, and Schaefer had threatened him. Fredin also argued that the district court lacked jurisdiction to hear the 2018 HRO petition

under the HRO statute because neither he nor Schaefer resided in Ramsey County and because the alleged violations of the 2016 HRO did not occur in Ramsey County.

On November 17, 2018, the 2016 HRO expired.

In a February 2019 order, the district court first determined that Fredin had been served with the 2018 HRO petition, Fredin had previously contested the underlying allegations in court, and the district court had jurisdiction under the HRO statute because “at least some of the harassment alleged in the petition occurred in Ramsey County.” The district court also granted Schaefer’s request for a 50-year HRO against Fredin after determining that Fredin had committed two or more violations of the 2016 HRO (2018 HRO). The district court adopted the factual findings of the May 2018 and October 2018 orders, which established that “beginning the day after the 2016 HRO was issued and continuing through at least May 22, 2018, [Fredin] engaged in an extensive course of conduct in violation of the prohibitions of the 2016 HRO against harassment of [Schaefer] and direct or indirect contact with [Schaefer].” The district court reasoned that collateral estoppel prevented Fredin from contesting the previously issued findings in the 2016 HRO file because the orders addressed “identical” issues, “represented final judgments on the merits,” the same parties were involved, and Fredin had a “full and fair opportunity to be heard.” Fredin appeals.

## **D E C I S I O N**

A district court may grant an HRO if it “finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2018). 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.” *Id.*, subd. 1(a)(1). An HRO is granted “for a fixed period of not more than two years.” *Id.*, subd. 5(b).

But if “the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years.” *Id.* A district court “may not extend a restraining order beyond two years from the effective date of the initial restraining order.” *Roer v. Dunham*, 682 N.W.2d 179, 181 (Minn. App. 2004). To obtain a subsequent HRO, the HRO must be based on “recent events, not on the events on which the initial order was based.” *See id.* at 182.

This court reviews a district court’s decision to issue an HRO for abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). “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.” *Id.* at 843-44.

**I. The district court did not err in determining that jurisdiction in Ramsey County was proper under the HRO statute.**

Fredin argues that the district court lacked jurisdiction under the HRO statute because neither he nor Schaefer are Minnesota citizens, the HRO statute does not “assert jurisdiction where neither party is a citizen of Minnesota,” and the “allegations of harassment did not occur in Minnesota.” We consider Fredin’s specific statutory challenge

to the district court’s jurisdiction based on the HRO statute.<sup>2</sup> We review de novo the district court’s interpretation and application of a statute to undisputed facts. *Seagate Tech., LLC v. W. Digital Corp.*, 854 N.W.2d 750, 757 (Minn. 2014) (interpretation of statute); *Anderson v. Christopherson*, 816 N.W.2d 626, 630 (Minn. 2012) (application of a statute to undisputed facts “involves a legal conclusion we review de novo”).

Under the HRO statute, a petitioner can file an HRO “in the county of residence of either party or in the county in which the alleged harassment occurred.” Minn. Stat. § 609.748, subd. 2 (2018). “There are no residency requirements that apply to a petition for a harassment restraining order.” *Id.* Fredin challenged whether the 2018 HRO petition was properly filed in Ramsey County based on section 609.748, subdivision 2, arguing that neither party is a resident and that the alleged harassment did not occur in Ramsey County.

The district court found jurisdiction was proper under Minn. Stat. § 609.748, subd. 2, because at least some of “the harassment that gave rise to [the] 2016 HRO” occurred in Ramsey County. The district court found that Fredin harassed Schaefer in Ramsey County on “at least two occasions after the 2016 HRO was issued.” First, the district court found Fredin’s November 2016 violation occurred in Ramsey County because (a) Fredin resided in St. Paul when he filed a police complaint against Schaefer in November 2016, based on information in the police report, and (b) Fredin admitted he

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<sup>2</sup> We question whether the HRO statute includes what Fredin calls a “jurisdictional” requirement. Instead, the provision Fredin challenges is either a filing requirement or a venue provision. But because neither Schaefer nor the district court questioned Fredin’s reference to the HRO statute as having a jurisdictional requirement, we will continue to refer to this as a statutory challenge to the district court’s jurisdiction.

spoke in person with a police officer at the St. Paul headquarters on Grove Street to make his complaint against Schaefer. The district court also found that, at the November 2018 evidentiary hearing, Fredin “offered no coherent or credible testimony as to where he currently resides.” Second, after finding Schaefer’s testimony credible, the district court found that she was “physically located in Ramsey County” when she viewed at least two of Fredin’s online posts about her. Fredin’s brief to this court does not challenge any of these factual determinations, which are supported by the record.

Fredin’s brief to this court does not discuss the district court’s analysis of jurisdiction under subdivision two of the HRO statute. Rather, in his brief to this court, Fredin argues that Schaefer did not timely serve him with the 2018 HRO petition 30 days before the July 9 evidentiary hearing, as required by Minn. Stat. § 609.748, subd. 5(d) (2018). Fredin misconstrues Minn. Stat. § 609.748, subd. 5(d), which grants *respondents* the right to request that an HRO be vacated or modified. If the respondent makes this request, “[p]ersonal service must be made upon the *petitioner* named in the restraining order not less than 30 days before the date of the hearing.” *Id.* (emphasis added). Subdivision 5(d) did not apply to Schaefer’s 2018 HRO petition. Rather, Schaefer had to serve Fredin with her 2018 HRO petition “at least five days before the hearing.” *Id.*, subd. 3. Schaefer complied with this requirement because she served Fredin with the 2018 HRO petition on June 29—ten days before the July 9 hearing.

We conclude that the district court properly rejected Fredin’s statutory challenge to jurisdiction after finding that Schaefer filed the 2018 HRO petition in the county where at least some of the alleged harassment occurred.

**II. Fredin failed to preserve his challenge to the district court’s decision to deny his notice to remove a judicial officer.**

Fredin argues that he timely filed a notice to remove the assigned judicial officer in response to the 2018 HRO, but that the district court judge “failed to comply with civil procedure and remove himself pursuant to Rule 63.03.”

A notice to remove “shall be served and filed within ten days after the party receives notice of which judge or judicial officer is to preside at the trial or hearing, but not later than the commencement of the trial or hearing.” Minn. R. Civ. P. 63.03. Removal cannot be filed “against a judge or judicial officer who has presided at a motion or any other proceeding of which the party had notice.” *Id.* A party can “once” disqualify a presiding judge or judicial officer “as a matter of right.” *Id.*; *see also OCC, LLC v. County Of Hennepin (In re OCC, LLC)*, 917 N.W.2d 86, 91 (Minn. 2018) (“The timely filing and service of a notice under Rule 63.03 automatically results in the judge’s removal.”).

The district court found that Fredin’s notice of removal was untimely for two reasons. First, the district court found Fredin’s July 9 notice of removal was untimely because it was filed against a judge who had presided over a hearing on the 2018 HRO petition. *See* Minn. R. Civ. P. 63.03. The district court found that the first hearing on the 2018 HRO petition was on June 25, 2018, when Schaefer first raised her request for a 50-year HRO, having filed the petition in the 2016 HRO file. Fredin and his attorney appeared at the June 25 hearing and did not object to the presiding judge or seek his removal. Second, the district court found that Fredin had actual notice of the judicial assignment for the 2018 HRO petition no later than the June 25, 2018 hearing when the

district court scheduled an evidentiary hearing for July 9, 2018. Yet Fredin filed his notice of removal on July 9, 2019, more than ten days after the June 25 hearing.

“A petition for a writ of prohibition is the proper means of challenging a district court judge’s denial of a notice of removal.” *In re Ihde*, 800 N.W.2d 808, 809-10 (Minn. App. 2011). “Such a writ prevents a judge from proceeding in a matter where he has been disqualified by a properly filed notice of removal” and “avoid[s] the possibl[e] waste of time, money, and effort required of all parties by a procedure which might involve two trials and possibly two appeals in order to adjudicate the issue.” *State v. Azure*, 621 N.W.2d 721, 725 n.3 (Minn. 2001) (quotation omitted). Whether an appellate court will review a notice of removal without a properly filed petition for writ of prohibition depends on “the circumstances of th[e] case.” *In re OCC, LLC*, 917 N.W.2d at 90 n.3; *see, e.g., State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008) (reviewing petition for writ of mandamus filed three days after the district court denied removal).

Here, the district court denied Fredin’s notice to remove in its July 2018 order. Fredin filed a 90-page “emergency petition for writ of prohibition” with this court in October 2018 “requesting relief in seven different district court matters,” including civil and criminal cases. Fredin’s petition did not challenge the district court’s decision to deny his notice of removal. This court dismissed Fredin’s writ petition because he failed “to provide proof of service, pay required filing fees, or comply with the rule governing motions to proceed in forma pauperis.” (Order, Appeal No. A18-1231, Sept. 5, 2018).

We conclude that Fredin’s removal argument is not properly before this court because he never petitioned for a writ of prohibition seeking review of the district court’s

decision. The district court issued a written order denying Fredin's notice to remove as untimely in July 2018. The evidentiary hearing was held four months later in November 2018, and the district court granted the 50-year HRO in February 2019. Even though Fredin filed a writ petition on other issues, he never raised the removal issue. Now that district court proceedings are complete, he asks this court to grant him a second evidentiary hearing with a different judge. We decline to do so under the circumstances. Allowing Fredin to start over with a new judge would waste court resources and undermine the rationale for requiring parties to pursue removal by a writ petition. *See Azure*, 621 N.W.2d at 725 n.3.

### **III. The district court properly applied collateral estoppel.**

Fredin argues that the district court erred in granting the 2018 HRO and applying collateral estoppel. In granting the 2018 HRO, the district court determined that Fredin had violated "a prior or existing restraining order on two or more occasions" and collateral estoppel applied to prevent Fredin from contesting the factual findings in the May 2018 and October 2018 orders involving the 2016 HRO.

"Collateral estoppel, also known as issue preclusion, prohibits a party from relitigating issues that have been previously adjudicated." *Barth v. Stenwick*, 761 N.W.2d 502, 507 (Minn. App. 2009). Collateral estoppel may bar the relitigation of an issue when:

- (1) the issue is identical to one in a prior adjudication; (2) there was a final judgment on the merits in the prior proceeding; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

*Id.* at 508. "Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that [appellate courts] review de novo." *Hauschildt v. Beckingham*,

686 N.W.2d 829, 837 (Minn. 2004). “Once it is determined that collateral estoppel is available, the decision to apply the doctrine is left to the trial court’s discretion.” *Pope Cty Bd. of Comm’rs v. Pryzmus*, 682 N.W.2d 666, 669 (Minn. App. 2004) (quotation omitted). “The district court’s decision to apply collateral estoppel will be reversed only upon a demonstrated abuse of discretion.” *Id.* (quotation omitted).

In his brief to this court, Fredin does not challenge the district court’s analysis of the first three elements of collateral estoppel. The district court determined that the elements were met because (1) the May 2018 and October 2018 orders found that Fredin had violated the 2016 HRO, which is identical to the issue raised by the 2018 HRO petition; (2) the May 2018 and October 2018 orders were final judgments on the merits because Fredin did not appeal; and (3) “[t]he parties in this action and the prior actions are identical.” The record supports the district court’s conclusions.

Fredin argues the district court erred in its analysis of the fourth element—whether he had a full and fair opportunity to be heard on the issue. Whether a party has had a full and fair opportunity to litigate largely turns on “whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties.” *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted). The district court determined that Fredin had a full and fair opportunity to be heard “with both the May [2018] and October [2018] Orders being issued only after full evidentiary hearings at which [Fredin] had ample incentive to litigate the harassment issues without significant procedural limitations.”

Fredin identifies no procedural limitations that restricted his opportunity to litigate the issues decided in the May 2018 and July 2018 Orders. Rather, Fredin appears to complain only that the district court prevented him from cross-examining Schaefer about her conduct at the evidentiary hearings. Fredin argues that “[t]ranscripts demonstrably prove [he] lacked a full and fair opportunity to litigate” because the district court “adamantly refused to address [his] contentions that Schaefer had destroyed [him] by defaming him.”

The only issue at the evidentiary hearings was whether *Fredin* had violated the 2016 HRO, *not* the allegations Fredin made about Schaefer’s conduct. Thus, the district court properly sustained objections to Fredin questioning Schaefer about *her* conduct. Based on our review of the record, Fredin had a full and fair opportunity to litigate whether he violated the 2016 HRO in the proceedings leading up to the May 2018 and October 2018 orders.

Because all four elements of collateral estoppel were satisfied, the district court did not abuse its discretion in determining that Fredin was estopped from contesting the May 2018 and October 2018 orders, which found that he had violated the 2016 HRO on two or more occasions.

#### **IV. Fredin raises constitutional arguments for the first time on appeal.**

Fredin appears to raise two constitutional arguments in his brief, contending that the February 2019 HRO violates his First Amendment right to free speech, and that the HRO

statute, Minn. Stat. § 609.748, subd. 1, violates constitutional due-process requirements as applied to him.

Fredin did not raise either issue during district court proceedings. The record only establishes that Fredin's brother vaguely mentioned the First Amendment when Fredin elicited minimal testimony from him during the November 2018 evidentiary hearing. But Fredin made no cogent legal argument about the First Amendment or due process, nor did he cite any legal authority or ask for any relief. Because Fredin raised neither the First Amendment nor the due-process issues in the district court, we conclude that Fredin did not properly raise either argument on appeal, and we decline to review them. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (holding that appellate courts generally will not consider matters not argued to and considered by the district court).

**Affirmed.**