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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1621**

Tiffany Hall,
Appellant,

vs.

Pipestone, LLC, et al.,
Defendants,

JJKEL Lodges, LLC, et al.,
Respondents.

**Filed April 13, 2020
Affirmed
Larkin, Judge**

Mower County District Court
File No. 50-CV-17-1229

Christopher J. Moreland, Ross D. Stadheim, Halunen Law, Minneapolis, Minnesota (for appellant)

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Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Florey, Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's denial of her requests for judgment as a matter of law (JMOL) or a new trial on her claims of retaliation under the Minnesota Whistleblower Act (the MWA) and reprisal under the Minnesota Human Rights Act (the MHRA). We affirm.

FACTS

Appellant Tiffany Hall, who is African American, sued respondents JJKEI Lodges LLC and Larry Powell. She asserted claims against JJKEI based on retaliation under the MWA, and race discrimination and reprisal under the MHRA. She asserted claims against Powell based on reprisal under the MHRA, as well as tortious interference with contract.

Hall's final amended complaint set forth the following allegations. Hall had been employed as a housekeeper for JJKEI at AmericInn in Austin from March 2013 to September 21, 2016. Hall filed a complaint with the U.S. Equal Employment Opportunity Commission (EEOC) on September 16, 2016, because she was "being harassed and discriminated against regularly" at work. Hall's supervisor, Powell, received notice of the EEOC grievance, and on September 20, "got very upset and began yelling at [Hall]" after she admitted that she had filed the grievance. Powell immediately suspended Hall for the rest of the day, and she "was frightened and surprised by [Powell's] aggressive, noisy, and boisterous demeanor towards her and felt her rights were being violated by the suspension, so she called 9-1-1." Powell fired Hall the next day and admitted in his deposition "that the sole reason for [Hall's] termination was her call to the police."

Hall dismissed her race-discrimination and tortious-interference-with-contract claims, and the case was tried to a jury over four days. After the respondents rested, Hall moved for a directed verdict on her retaliation and reprisal claims. The district court denied Hall's motion. The jury returned a special verdict finding that respondents did not terminate Hall's employment in violation of the MHRA or the MWA.

Hall moved for JMOL or a new trial on the following grounds: irregularities in the proceedings deprived her of a fair trial, misconduct of the respondents prejudiced her, errors of law occurred at trial, and the jury's findings were not justified by the evidence or were contrary to law. The district court summarily denied Hall's motions for JMOL and a new trial. Hall appeals.

D E C I S I O N

I.

If a party moves for JMOL after a jury returns a verdict, the district court may “(1) allow the judgment to stand, (2) order a new trial, or (3) direct entry of judgment as a matter of law.” Minn. R. Civ. P. 50.02. JMOL “may be granted only when the evidence is so overwhelming on one side that reasonable minds cannot differ as to the proper outcome.” *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019) (quotations omitted); see *Longbehn v. Schoenrock*, 727 N.W.2d 153, 159 (Minn. App. 2007) (“The jury’s verdict will not be set aside if it can be sustained on any reasonable theory of the evidence.” (quotation omitted)). “In applying this standard, (1) all the evidence, including that favoring the verdict, must be taken into account, (2) the evidence is to be viewed in the light most favorable to the verdict, and (3) the court may not weigh the evidence or

judge the credibility of the witnesses.” *Kedrowski*, 933 N.W.2d at 55 (quotation omitted); *see also Covey v. Detroit Lakes Printing Co.*, 490 N.W.2d 138, 141 (Minn. App. 1992) (“Because it is the jury’s function to determine credibility, review of a jury verdict is even more limited when the decision rests upon weighing the credibility of witnesses.”).

Construing the evidence in the light most favorable to the verdict “does not mean that [courts] are precluded from actually examining the evidence to assess whether there is a sufficient basis for the jury’s finding.” *Kidwell v. Sybaritic, Inc.*, 784 N.W.2d 220, 229 (Minn. 2010). An appellate court reviews a district court’s decision whether to grant JMOL de novo. *Kedrowski*, 933 N.W.2d at 55. This court therefore independently determines whether there is “any competent evidence reasonably tending to support” the jury’s verdict, without deferring to the district court’s ruling. *Janke v. Duluth & Ne. R.R. Co.*, 489 N.W.2d 545, 548 (Minn. App. 1992), *review denied* (Minn. Oct. 28, 1992).

Hall challenges the district court’s denial of JMOL on her retaliation and reprisal claims. We address each challenge in turn.

Retaliation Claim Under the MWA

Hall contends that the “jury’s finding that respondents did not violate the MWA when they terminated [her] has no reasonable support in fact and is contrary to law, thus mandating JMOL in [her] favor.”

The MWA provides:

An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because:

(1) the employee, or a person acting on behalf of an employee, in good faith, reports a violation, suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official[.]

Minn. Stat. § 181.932, subd. 1(1) (2018).

An employee generally may prove a whistleblower-retaliation claim in one of two ways. First, an employee may directly prove that an employer took adverse action against the employee because the employee engaged in statutorily protected conduct. *Cokley v. City of Otsego*, 623 N.W.2d 625, 630, 632 (Minn. App. 2001), *review denied* (Minn. May 15, 2001). Second, an employee may prove retaliatory motive by establishing (1) statutorily protected conduct by the employee, (2) an adverse employment action by the employer, and (3) a causal connection between the two. *Moore v. City of New Brighton*, 932 N.W.2d 317, 323 (Minn. App. 2019), *review denied* (Minn. Oct. 15, 2019).

A report is not statutorily protected conduct under the MWA unless it was made in good faith. See Minn. Stat. § 181.932, subd. 1(1). “‘Good faith’ means conduct that does not violate section 181.932, subdivision 3.” Minn. Stat. § 181.931, subd. 4 (2018). Section 181.932, subdivision 3, provides that “[t]his section does not permit an employee to make statements or disclosures knowing that they are false or that they are in reckless disregard of the truth.” Minn. Stat. § 181.932, subd. 3 (2018).¹ Thus, a report is not made in good

¹ In 2013, the legislature amended the MWA to add the current definition of “good faith.” 2013 Minn. Laws ch. 83, § 1, at 468. The supreme court has interpreted this amendment as superseding the prior judicially crafted definition of “good faith” that required a whistleblower to seek to expose an illegality when reporting unlawful conduct. *Friedlander v. Edwards Lifesciences, LLC*, 900 N.W.2d 162, 165-66 (Minn. 2017).

faith—and therefore not statutorily protected conduct—if the employee who makes the report knows that it is false or that it is in reckless disregard of the truth.

The parties do not dispute that Hall made a report to law enforcement within the meaning of the MWA by calling the police to report Powell’s conduct. The 911 call was entered into evidence at trial and played for the jury. During the call, Hall stated, “[M]y supervisor just attacked me, cursing me out, and saying that he’s sending me home.” The 911 dispatcher stated, “He pushed you out of work—you’re saying?” Hall replied, “Yes, he telling me to get out of his facility.” When Hall asked whether she needed to remain at AmericInn, the dispatcher stated, “I suppose if you want an officer and you’re saying that he assaulted you.” Hall responded, “Yes,” but did so before the dispatcher said the word “assaulted.” To the extent that Hall reported that Powell “attacked” her, her report to police suggested a potential violation of criminal assault statutes. *See, e.g.*, Minn. Stat. § 609.224, subd. 1 (2018) (stating that a person commits fifth-degree assault if the person “commits an act with intent to cause fear in another of immediate bodily harm or death” or “intentionally inflicts or attempts to inflict bodily harm upon another”).

Powell testified that he discharged Hall on September 21, 2016. The parties do not dispute that this discharge constituted adverse action against Hall under the MWA. Powell admitted that he had previously testified in his deposition that he terminated Hall because she called the police and that his deposition testimony was true.

Because the evidence indisputably establishes that Hall called the police alleging conduct that implicated a potential violation of criminal-assault statutes and Powell fired Hall for making that call, the disputed issue is whether Hall’s report to the police was

statutorily protected conduct under the MWA, that is, whether it was made in good faith. See Minn. Stat. § 181.932, subd. 1(1). In analyzing that issue, we view the evidence “in the light most favorable to the verdict” and defer to the jury’s evaluation of the credibility of witnesses. *Kedrowski*, 933 N.W.2d at 55; *Covey*, 490 N.W.2d at 141.

Hall’s testimony regarding the incident that prompted her 911 call was as follows. While Hall was cleaning a room at the hotel, Powell confronted her about the EEOC grievance she had filed and then suspended her. Hall went to Powell’s office and asked him whether he was going to give her any documentation regarding the suspension. Powell told her he would bring documentation out to her in the lobby and “slammed his door.” Powell left his office about a minute later, approached Hall “aggressively,” stood over her, yelled and screamed, and was “pointing his finger in [her] face.”

Powell’s testimony described the incident as follows. Powell approached Hall while she was cleaning a room at the hotel and talked to her about her conduct that past weekend, including a written warning completed by another employee who supervised Hall. The conversation became heated and hostile, and Powell eventually told Hall to go home because she was suspended for the day. Powell went to his office after the conversation. Hall entered his office and asked for a note regarding her suspension. Powell told Hall to go home and come back the next day. When Powell left his office, Hall was seated in the hotel lobby. Powell told Hall to go home multiple times, but she said she was not going to leave unless he called the police. Powell testified that he did not put his hands in Hall’s face at any time that morning and did not hover over her when she sat in the hotel lobby.

To the extent that Hall's and Powell's versions of the events differ, this court must view the evidence in the light most favorable to the verdict and defer to the jury's determination that Powell was more credible than Hall. *See Kedrowski*, 933 N.W.2d at 55; *Covey*, 490 N.W.2d at 141.

Hall argues that "Powell largely corroborated [her] description of their 'conflict' (his word), and acknowledged that it unfolded in all materially relevant regards just as she described." She notes that Powell conceded that "during the course of their interaction he was 'mad,'" that "voices [were] raised," that Powell's "temper was likewise 'raised' and 'flared,'" and that he was "'heated' and 'hostile'" toward Hall during the altercation.

Although Powell testified that the conversation in the hotel room became heated and hostile, his testimony did not support Hall's suggestion that he was physically aggressive when he spoke to her in the hotel lobby. For example, Powell testified that he did not put his hands in Hall's face at any time that morning or hover over her when he spoke to Hall in the hotel lobby. More importantly, Hall's assertion in the 911 call that Powell "attacked" her is not supported by Powell's testimony. Our standard of review requires us to view the evidence in the light most favorable to the verdict and defer to the jury's evaluation of witness credibility. Powell's version of the events supports a conclusion that Hall's report to the police that Powell "attacked" her was false. Because a report is in bad faith and thus not statutorily protected under the MWA if the reporter knows it is false or in reckless disregard of the truth, *see* Minn. Stat. §§ 181.931, subd. 4, .932, subds. 1(1), 3, it was reasonable for the jury to conclude that Hall's report was not statutorily protected under

the MWA. The district court therefore did not err by denying Hall’s motion for JMOL on her retaliation claim under the MWA.

Reprisal Claim Under the MHRA

Hall contends that the “jury’s finding that respondents did not violate the MHRA when they terminated [her] has no reasonable support in fact and is contrary to law.”

Under the MHRA, it is an unfair discriminatory practice for any individual who participated in alleged discrimination as an employer to “intentionally engage in any reprisal against any person because that person . . . opposed a practice forbidden under this chapter.” Minn. Stat. § 363A.15(1) (2018). “A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment.” Minn. Stat. § 363A.15 (2018).

Like a retaliation claim under the MWA, an employee can prove an employer’s retaliatory motive for a reprisal claim under the MHRA directly or circumstantially. *Potter v. Ernst & Young, LLP*, 622 N.W.2d 141, 145 (Minn. App. 2001). An employee may prove retaliatory motive using circumstantial evidence by establishing statutorily protected conduct by the employee, adverse employment action by the employer, and a causal connection between the two. *Bahr v. Capella Univ.*, 788 N.W.2d 76, 81 (Minn. 2010).

Hall argues that she engaged in statutorily protected conduct by making “multiple filings with the EEOC describing and opposing [racial] discrimination.” Hall further argues that she suffered adverse employment actions when Powell “suspended her on September 20, 2016, and fired [her] one day later.” Lastly, Hall argues that “Respondents have admitted the existence of a causal connection between [her] opposition to their racial discrimination and the adverse employment actions she suffered.” (Emphasis omitted.)

Hall notes that Powell admitted that he brought up Hall's September 16, 2016 EEOC complaint when he confronted her on September 20, that Powell was angry about the complaint, that Powell "suspended Hall on the spot," and that Powell fired her one day later. (Emphasis omitted.)

Although Hall identifies her suspension as an adverse employment action, the jury was not asked to decide whether that suspension violated the MHRA. Instead, the special verdict form asked, "Did [respondents] terminate [Hall's] employment in violation of the Minnesota Human Rights Act?" As to Hall's termination, Powell testified that he did not fire Hall based on anything related to Hall's EEOC complaint. If, as the jury apparently found, Powell's testimony was credible, Powell did not discharge Hall because of her EEOC complaint. Because it was reasonable for the jury to conclude, based on Powell's testimony, that respondents did not discharge Hall because of her EEOC complaint, the district court did not err by denying Hall's motion for JMOL on her reprisal claim under the MHRA.

II.

Under Minn. R. Civ. P. 59.01, a district court may grant a motion for a new trial on seven different grounds, including "[i]rregularity in the proceedings of the court, . . . jury, or prevailing party, . . . whereby the moving party was deprived of a fair trial," "[e]rrors of law occurring at the trial . . . objected to at the time," or because "[t]he verdict . . . is not justified by the evidence, or is contrary to law." Minn. R. Civ. P. 59.01(a), (f), (g). "Granting a new trial is left largely to the discretion of the [district] court, and a [district]

court's decision will be reversed only for a clear abuse of discretion.”² *Baker v. Amtrak Nat'l R.R. Passenger Corp.*, 588 N.W.2d 749, 753 (Minn. App. 1999).

Hall contends that she is entitled to a new trial because the “jury’s findings that Respondents did not violate the MWA and/or MHRA when they fired [her]” are not justified by the evidence or are contrary to law under Minn. R. Civ. P. 59.01(g). Hall argues that “[f]or the same reasons explained at length” in her JMOL arguments, “[her] presentation of direct evidence irrefutably establish[ed] each element of her claims.”

On appeal from a denial of a motion for a new trial, an appellate court should not set aside a jury verdict unless it is “manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict.” *Roemer v. Martin*, 440 N.W.2d 122, 124 (Minn. 1989) (quotation omitted). Although the new-trial standard is less rigorous than the standard for granting JMOL, it is still a demanding standard. See *Clifford v. Geritom Med, Inc.*, 681 N.W.2d 680, 687 (Minn. 2004) (noting that the new-trial standard is a demanding standard, though it is less rigorous than the standard for granting judgment notwithstanding the verdict). Because the district court is in a better position to

² The district court did not explain its decision to deny Hall’s new-trial motion. Hall argues that “the absence of any analysis conceals the bases for [the district court’s] decision and precludes this Court from knowing whether it appropriately exercised its discretion.” Although this is not such a case, a district court’s failure to explain a discretionary decision can result in a remand. See *In re Welfare of I.N.A.*, 902 N.W.2d 635, 643-44 (Minn. App. 2017) (remanding because this court could not “determine based on the record and restitution order before us whether the district court abused its discretion by making a finding unsupported by the evidence or against logic and the facts on record, because the [district court’s] order [was] unclear”), review denied (Minn. Nov. 28, 2017).

determine whether the verdict is justified by the evidence, this court will not reverse its decision to deny a motion for a new trial absent a clear abuse of discretion. *Id.*

As explained above, Hall did not present evidence that irrefutably established the elements of her claims. As to her retaliation claim under the MWA, Hall's testimony regarding her altercation with Powell on September 20, 2016, is inconsistent with Powell's testimony. If the jury believed Powell's testimony, it was reasonable for it to conclude that Hall's report was in bad faith and not statutorily protected conduct under the MWA. As to Hall's reprisal claim under the MHRA, Powell testified that he did not fire Hall because of Hall's EEOC complaint. If the jury believed Powell's testimony, it was reasonable for it to conclude that respondents did not terminate Hall's employment because of statutorily protected conduct under the MHRA.

The jury's findings that respondents did not terminate Hall's employment in violation of the MWA or the MHRA are not "manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict." *See Roemer*, 440 N.W.2d at 124 (quotation omitted). The district court therefore did not abuse its discretion by refusing to grant Hall a new trial on the ground that the jury's verdict was not justified by the evidence or was contrary to law.

III.

Erroneous evidentiary rulings can constitute errors of law that justify the grant of a new trial under Minn. R. Civ. P. 59.01(f). *Kedrowski*, 933 N.W.2d at 62. Hall contends that she is entitled to a new trial because the district court "made a number of erroneous

evidentiary rulings that might reasonably have changed the result of trial.” We address each of Hall’s assertions of evidentiary error in turn.

September 20, 2015 Police Report

Hall argues that the “district court erred in admitting irrelevant and unfairly prejudicial evidence of a police report [she] filed on September 20, 2015.” Evidence is not admissible unless it is relevant, that is, it must have 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, 402. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403.

Prior to trial, Hall moved to exclude a September 20, 2015 police report, which indicated that Hall went to a police station and reported “harassment that [was] occurring at work by [a] co-worker.” At trial, Hall argued that the police report was irrelevant because it originated a year before the incident at issue and that there was “an extreme danger of conflating” the September 20, 2015 report with the report regarding the September 20, 2016 incident. The district court denied Hall’s motion in limine, reasoning that the September 20, 2015 police report was relevant because it was documentation of the “on-going harassing behavior” alleged in Hall’s complaint, went “directly to the reasonableness of her second police report,” and “explain[ed] the relationship” between the parties.

On appeal, Hall argues that the 2015 police report was irrelevant because she was not “required to either allege or prove that it was ‘reasonable’ for her to make her second police report in 2016” for that report to be a good faith report under the MWA. Hall is correct that the September 20, 2015 police report is not relevant to her claim under the MWA. But because the harassment mentioned in the September 20, 2015 police report is also mentioned in Hall’s September 16, 2016 EEOC complaint, it was somewhat relevant to her reprisal claim under the MHRA. The district court therefore did not err by admitting the September 20, 2015 police report.

Character Evidence

Hall argues that the district court “erred in admitting irrelevant character evidence.” Evidence of a person’s character or a trait of character is generally not admissible for the purpose of proving action in conformity therewith on a particular occasion. Minn. R. Evid. 404(a).

Hall asserts that the district court erred by allowing respondents’ counsel to elicit testimony from S.B., a housekeeper at AmericInn, that Powell “is generally a nice person.” Hall argues that S.B.’s testimony was irrelevant because it did not address any of the elements of the retaliation and reprisal offenses at issue here. Hall argues that “Respondents’ sole reason for calling [S.B.] was to reinforce the notion that on occasions other than when he fired [her], Mr. Powell is generally a nice person.” Specifically, she asserts that the following testimony from S.B. was improper character evidence:

Q: Before we get into that further, what I’d like you to do is talk about Larry Powell a little bit.

A: He’s a great guy.

....

Q: ... Now focusing on Larry, why do you think he's a great boss?

A: [He] helps when you need it. He's there for you, if you need something, he can help you, if you need it. And he's just a great guy to be around.

....

Q: Is he the intimidating kind of guy?

A: No.

Q: What do you mean when you give me that answer?

A: He's just a great guy. He jokes around with you. He's just warm, and just great to be around.

....

Q: Has he ever personally helped you outside of just what he has to do to pay you to work?

A: Yeah.

Q: Tell us about that.

A: He's helped me get into a place for me and my kids. He's helped me out with the money for it.

Hall did not object to that testimony. Hall's only objection was to the question, "Has [Powell] ever intimidated you?" But S.B.'s response, "No," is different from S.B.'s unobjected-to explicit testimony that Powell was a "great guy."

"Errors of law occurring at the trial" may be the basis for a new trial only if they were "objected to at the time or, if no objection need have been made pursuant to Rules 46 and 51, plainly assigned in the notice of motion." Minn. R. Civ. P. 59.01(f); see Minn. R. Civ. P. 46 (exceptions unnecessary); Minn. R. Civ. P. 51.03 (objections to jury instructions). Because Hall failed to object to the challenged evidence, it cannot be a basis for a new trial under Minn. R. Civ. P. 59.01(f).³

³ We note that if Hall had objected to S.B.'s testimony that Powell was a "great guy," exclusion of the evidence would have been appropriate under Minn. R. Evid. 404(a).

Evidence that Hall Did Not Fear Powell

Hall argues that the district court erred by allowing Powell's spouse, C.P., to provide speculative testimony regarding whether Hall felt unsafe, fearful, or threatened by Powell during the September 20, 2016 incident. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Minn. R. Evid. 602.

Respondents' counsel asked C.P. whether she had ever observed Hall looking "like she was afraid or threatened by some situation" and whether Hall's claims that she felt unsafe or threatened by Powell's conduct on September 20, 2016, was consistent with what C.P. knew of Hall's personality. C.P. testified that she did not "believe [Hall] ever felt like she was threatened or afraid" because Hall "never acted that way" and C.P. never "perceived it in anyway." Hall objected to this line of questioning as speculative and irrelevant. The district court overruled her objections.

C.P. testified that she did not witness the altercation between Hall and Powell on September 20 and did not know whether Hall felt threatened or afraid during the incident. Thus, C.P.'s testimony regarding whether Hall felt unsafe, fearful, or threatened by Powell was based on speculation, and the district court erred in allowing it.

The Death of Powell's Son-In-Law

Hall argues that the "district court erred in admitting irrelevant and unfairly prejudicial testimony from [C.P.] about the death of her son-in-law." See Minn. R. Evid. 401, 402, 403.

C.P. testified that in 2014, she stepped down from her position as general manager for the hotel. Respondents' counsel asked C.P. why she stepped down, and C.P. began to explain that her daughter had just had a baby and that she was helping her daughter with daycare. Hall objected. At a subsequent bench conference, Hall's counsel noted that C.P. had had an emotional response while she was answering the question and argued that the reason why C.P. stepped down was not relevant and that "it's prejudicial if [C.P. is] going to cry in front of the jury." Respondents' counsel explained that C.P.'s son-in-law had died and argued that C.P.'s testimony was relevant to the extent that it explained how her role at the hotel had changed. In response, Hall stated, "[T]his is a passion and prejudice argument . . . in the extreme." The district court allowed the testimony, reasoning, "I think maybe the emotion is already busted up, at this point, with this bench conference, as to why she left the role."

C.P. continued her testimony and testified, "[M]y daughter's husband was killed, our son-in-law, and she had a two-year-old and a five-week-old baby." C.P. further testified that she completely disassociated herself from the hotel "in 2016 when [her son-in-law] was killed in an accident," that her daughter and the children moved in with her and Powell, and that because she was focused on them, Powell had to take on C.P.'s duties at the hotel.

Hall argues that because C.P.'s "son-in-law passed away two years after she [stepped down it] could not have played any role in that decision" and that evidence regarding his death therefore was "irrelevant and inadmissible." Hall also argues that "the only possible purpose to be served by" the evidence "was to engender sympathy amongst

the jurors for the Powells, and to confuse or mislead them about the timing and reason for [C.P.’s] departure from her role as General Manager.”

The relevance of C.P.’s reasons for stepping down from her position as general manager at the hotel in 2014 is not apparent to us. And C.P.’s testimony that her son-in-law was killed in an accident in 2016, leaving behind his wife and two young children, inappropriately invoked sympathy for the Powells. We therefore conclude that the district court erred by allowing this testimony. See Minn. R. Evid. 401, 402, 403.

Prejudice

“Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party’s ability to demonstrate prejudicial error.” *City of Moorhead v. Red River Valley Coop. Power Ass’n*, 830 N.W.2d 32, 39-40 (Minn. 2013) (quotation omitted). “An evidentiary error is prejudicial if it might reasonably have influenced the jury and changed the result of the trial.” *George v. Estate of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). “Evidence that would have virtually no value in resolving the disputed fact questions is not prejudicial.” *Kedrowski*, 933 N.W.2d at 62 (quotation omitted); see also *George*, 724 N.W.2d at 9 (“[T]he admission of evidence that is cumulative or is corroborated by other competent evidence will be deemed harmless and will not warrant a new trial.”).

In assessing whether erroneously admitted evidence might reasonably have influenced the jury and changed the result of the trial, appellate courts consider the record as a whole, including whether the erroneously admitted evidence was the only evidence in the case or was evidence regarding an issue that was central to the case; whether there was other, unobjected to, evidence on the same issue and the cumulative weight of that

evidence; whether there was otherwise ample evidence to sustain the verdict; and whether a cautionary instruction was requested. *Kedrowski*, 933 N.W.2d at 62 (considering whether erroneously admitted evidence had value in resolving disputed fact questions); *George*, 724 N.W.2d at 9 (considering whether erroneously admitted evidence was cumulative or corroborated by other competent evidence); *Kingsley v. Indep. Sch. Dist. No. 2*, 251 N.W.2d 634, 635-36 (Minn. 1977) (considering whether there was otherwise ample evidence to sustain the verdict and whether a cautionary instruction was requested).

The district court erred by allowing C.P.’s testimony regarding whether Hall felt afraid or threatened during the altercation between Hall and Powell on September 20, 2016, as well as C.P.’s testimony regarding the death of Powell’s son-in-law. Hall’s argument regarding the prejudicial impact of C.P.’s testimony is limited to a statement of the prejudice standard set forth above and an assertion that the error “might reasonably have changed the result.” (Quotation omitted.) Hall does not explain or develop that assertion in the context of the trial record as a whole. For the reasons that follow, Hall’s undeveloped assertion of prejudice is not persuasive.

Resolution of this case at trial came down to whether the jury believed Hall or Powell regarding the September 20, 2016 incident and Powell’s reason for firing Hall. As described above, the testimony of Hall and Powell was inconsistent regarding some crucial aspects of Hall’s claims, such as whether Hall’s statement in her 911 call that Powell “attacked” her was accurate, whether Powell was physically aggressive toward Hall during the incident, and whether Powell fired Hall because she filed an EEOC complaint.

C.P.'s speculative testimony regarding whether Hall had felt threatened or afraid is unlikely to have influenced the jury because C.P. admitted that she did not witness the September 20 altercation between Hall and Powell. Moreover, as Hall argued to the jury in closing, the only person who had direct knowledge regarding whether Hall felt threatened or afraid during that incident was Hall herself. The potential influence of C.P.'s testimony regarding the death of her son-in-law is more significant because it may have engendered sympathy for the Powells and made the jury more likely to believe Powell.

However, any prejudicial impact of the erroneously admitted testimony from C.P. was mitigated by the testimony of S.R., a maintenance worker at the hotel, which was consistent with Powell's testimony. S.R. testified that he saw Powell talk to Hall in Powell's office and heard Powell tell Hall to go home for the day. S.R. also testified that he saw Powell speak with Hall in the hotel lobby and again tell her to go home for the day. Lastly, S.R. testified that Powell did not raise his voice or have his hands close to Hall's face when talking with Hall in the lobby. S.R.'s testimony tended to corroborate Powell's version of the events. Moreover, the jury had ample opportunity to judge the credibility of Powell and Hall based on their demeanor and testimony at trial, as well as on the recordings of Hall's 911 call and the police interviews of Powell and Hall, which were admitted as evidence at trial.

In sum, given the trial record as a whole—which establishes that the jury had ample opportunity to assess the relative credibility of Hall and Powell by means other than C.P.'s inadmissible testimony—we reject Hall's undeveloped assertion that the evidentiary errors

were prejudicial and necessitate a new trial. The district court therefore did not abuse its discretion by refusing to grant Hall a new trial based on those errors.

Cumulative Error

Hall contends that she “is entitled to a new trial based on the cumulative effect of the errors committed at trial.” As support, Hall adds another assertion of error, that “the district court erroneously refused to strike a juror for cause,” which when taken cumulatively with the other errors, had the effect of denying her a fair trial.

“An appellant may be entitled to a new trial in rare cases where the errors, when taken cumulatively, have the effect of denying the appellant a fair trial.” *State v. Fraga*, 898 N.W.2d 263, 278 (Minn. 2017) (quotation omitted). But appellate courts have only developed and applied the cumulative-error doctrine in criminal cases. *See, e.g., State v. Williams*, 908 N.W.2d 362, 366 (Minn. 2018); *Fraga*, 898 N.W.2d at 278; *State v. Penkaty*, 708 N.W.2d 185, 200 (Minn. 2006). Hall does not provide any authority supporting application of the cumulative-error doctrine in a civil case. Assuming without deciding that the doctrine applies here, Hall has failed to establish that the district court’s alleged error in refusing to strike a juror for cause resulted in an unfair trial. As Hall acknowledges, the relevant juror ultimately was not seated on the jury. Although Hall argues that the alleged error “forc[ed her] to use a peremptory strike” and prejudiced “her ability to seat a fair and impartial jury,” she does not explain why the seated jury was unfair and partial.

Because Hall has not established that the additional alleged error affected the partiality of the jury or the fairness of her trial, it could not tip the prejudice scale in Hall’s

favor. Once again, given the record as a whole, Hall has not met her burden to show prejudicial error justifying a new trial.

Affirmed.