

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0012**

Heather Mary Zigan,
Respondent,

vs.

Louis Leroy Gray,
Appellant.

**Filed August 30, 2021
Affirmed
Segal, Chief Judge**

Todd County District Court
File No. 77-CV-20-780

Heather Mary Zigan, Browerville, Minnesota (pro se respondent)

Jean Gustafson, Brainerd, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Ross, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

Appellant challenges the issuance of a harassment restraining order (HRO) against him, arguing that the district court committed numerous errors while conducting the hearing and that the HRO is not supported by the evidence. Because we conclude that the district court committed no errors and the HRO is supported by the record, we affirm.

FACTS

Appellant Louis Leroy Gray is a former coworker of respondent Heather Mary Zigan. They had a friendly relationship while working together at a Walmart. After Gray left his position at Walmart, he continued to contact Zigan repeatedly and with effusive language that made her uncomfortable. Zigan asked Gray to stop contacting her, but he persisted by texting her, leaving her voicemails, and calling her home phone. She blocked his number on her cell phone, but he continued to call her and even drove to her neighborhood in an attempt to find her. He also came to look for Zigan in the Walmart parking lot.

After several months of persistent contact, Zigan petitioned the district court for an ex parte HRO. Gray requested a hearing to challenge the HRO, and the court, due to the COVID-19 pandemic, held a remote hearing. Before the hearing, Zigan's mother sent a letter to the district court asking that Zigan's sister be allowed to testify on Zigan's behalf because Zigan "has a disability with a medical diagnosis of mild mental handicap with verbal apraxia." At the hearing, the district court considered this request and asked Gray if he had any objection to allowing Zigan to be assisted by her sister in presenting her case. Gray stated that he had no objection. Zigan's sister then testified about Gray's persistent contact with Zigan and that these contacts upset and disturbed Zigan. The sister also testified that Zigan, Zigan's father, and some of Zigan's coworkers at Walmart had all told Gray to stop contacting Zigan. At the close of the sister's testimony, the district court asked Zigan whether the testimony by her sister was accurate and Zigan affirmed that it was.

Gray testified at the hearing that his relationship with Zigan was mutual and friendly, and that he intended no harm. Gray introduced his neighbor as a witness who testified that Gray had not gone to Zigan’s workplace and waited for her in the parking lot on September 4, 2020, contradicting the allegation in Zigan’s petition. Zigan did not cross-examine Gray or his witness, but as the hearing came to a close, Zigan’s sister offered a “clarification” that the date that Gray allegedly waited for Zigan outside her workplace was written incorrectly on the petition—the date was September 11, not September 4.

Following the hearing, the district court granted Zigan an HRO against Gray. Gray now appeals.

DECISION

Before reviewing the issues on their merits, we note that Gray inadequately briefed the issues raised in his appeal and failed to object to the alleged errors before the district court. We may decline review of Gray’s arguments on these bases. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally do not address matters nor previously presented to and considered by the district court); *Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 762 (Minn. App. 2013) (applying *Thiele* in an HRO appeal); *see also Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”). We will, nevertheless, briefly address the arguments on their merits. *See* Minn. R. Civ. App. P. 103.04 (allowing appellate courts to address questions in the interests of justice).

The district court may issue an HRO if the petitioner has filed a petition, it has been served on the respondent, respondent has exercised his right to request a hearing, and the court finds at the subsequent hearing that “there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b) (2020). The statute defines harassment in relevant part as: “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, regardless of the relationship between the actor and the intended target.” *Id.*, subd. 1(a)(1) (2020).

We review “a district court’s grant of a[n HRO] under an abuse-of-discretion standard.” *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We will not overturn a district court’s decision to grant a restraining order unless that decision “is based on an erroneous view of the law” or is unsupported by the facts in the record. *See State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). We will only set aside a district court’s findings of fact if they are clearly erroneous. *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000); *see also* Minn. R. Civ. P. 52.01.

In this appeal, Gray claims that the district court erred in its handling of Zigan’s request for accommodation by (1) failing to issue a continuance sua sponte to Zigan when she requested accommodations at the hearing; (2) relying on the statement of Zigan’s mother that Zigan required accommodations; (3) granting Zigan accommodations based on the statement of Zigan’s mother; (4) failing to issue a continuance sua sponte to allow Gray to consider whether to accept Zigan’s accommodation request; (5) not allowing Gray to

cross-examine Zigan; (6) not striking Zigan’s sister’s “clarification” at the close of the hearing; (7) allowing the hearing to continue despite technological difficulties; and (8) issuing an HRO without sufficient evidentiary support. We address all eight issues below, grouping together several of the related issues.

I. Alleged Errors in the Conduct of the Hearing

A. Testimony of Zigan’s Sister

The first five issues that Gray raises are based on the district court’s decision to allow Zigan’s sister to testify on Zigan’s behalf. Gray appears to argue that this interfered with his right to a hearing. The district court, however, took several steps to ensure that the accommodation granted to Zigan did not violate Gray’s rights. First, the district court questioned Zigan and Zigan’s mother regarding Zigan’s need for an accommodation. The district court then asked Gray if he objected to Zigan’s sister helping testify, and he replied, “I have no objection, Your Honor. I want this to be as best—turn out the best for both parties.”

Zigan’s sister testified both to her own experience, based on her personal knowledge and observations, and to what Zigan had told her. After Zigan’s sister testified, the district court said to Gray:

COURT: Okay. And I appreciate that you consented to [Zigan’s sister] speaking for [Zigan]. I appreciate that, and I’m sure [Zigan] does, too.
[GRAY]: Very much so.

The district court confirmed with Zigan that her sister had testified accurately, and allowed Gray to cross-examine Zigan’s sister. Under these facts, where Gray twice consented to

allowing Zigan's sister to testify on Zigan's behalf, we conclude that Gray agreed to waive this issue, and hence that the district court did not err.

B. Continuance

Gray argues that rather than allowing Zigan's sister to testify on her behalf, the district court should have granted either Gray or Zigan a continuance sua sponte. Neither party requested a continuance at the time of the hearing, and neither objected to allowing Zigan's sister to testify. We review a district court's decision whether to grant a motion for a continuance for abuse of discretion, and an appellant must show they were prejudiced in order to justify reversal. *In re Muntner*, 470 N.W.2d 717, 719 (Minn. App. 1991), *review denied* (Minn. Aug. 2, 1991); *Weise v. Comm'r of Pub. Safety*, 370 N.W.2d 676, 678 (Minn. App. 1985).

Here, neither party requested a continuance, and Gray fails to show that the district court erred by not issuing a continuance sua sponte, on the court's own volition. Gray consented to the suggested accommodation at the hearing, and did not appear to need time to deliberate—there is no evidence that he asked questions, paused, or wavered before consenting. Gray has not shown that the district court erred by not issuing, of its own volition, a continuance that was not requested.

C. Sister's "Clarification"

Gray argues that the district court erred by allowing Zigan's sister to testify to a fact after Gray's testimony had concluded. During the hearing, Gray presented testimony from his neighbor that he had been at home on September 4, thereby contradicting the allegation in Zigan's HRO petition that Gray was waiting for Zigan in the Walmart parking lot on

that date. At the end of the hearing, after the district court said it had taken the matter under advisement, Zigan's sister interjected that Gray had gone to Zigan's workplace and waited for her by her car on September 11, not on September 4.

Gray did not object to Zigan's sister's statement during the hearing, but now argues that the district court erred by allowing the statement. Gray presents no legal support for his claim that the district court erred. And, even if the district court had erred by failing to strike the sister's "clarification" from the record, the statement did not impact the issuance of the HRO order—the district court did not cite that alleged act of harassment in its HRO. See Minn. R. Civ. P. 61 (requiring courts to disregard harmless error).

D. Technological Difficulties

Gray's argument that technological difficulties violated his right to a hearing fails because there is little evidence in the record that the technical difficulties affected Gray's case. Gray points to some inaudible statements and background noise noted in the hearing transcript, but it is not clear how this impacted his right to a hearing. Although the district court did occasionally have difficulty hearing the parties, it does not appear that this impacted the parties' ability to present their case before the court. Each party was able to present exhibits and witnesses, and to cross-examine witnesses.

II. Sufficiency of Evidence

Gray argues that the district court did not have sufficient evidence to support granting the HRO. We review the district court's findings of fact for clear error. *Witchell*, 606 N.W.2d at 732.

In its order, the district court found that Gray followed, monitored, or pursued Zigan when he “[t]raveled to Browerville, [and] went door-to-door looking for [Zigan]’s house.” Zigan’s sister testified to this event, and Gray admitted he had been in Browerville that day but “never made it to [Zigan’s family’s] house” and drove back home once he was told he “wasn’t welcome.”

The district court found that Gray made harassing phone calls and sent harassing text messages to Zigan when he “[r]epeatedly contacted [Zigan] via text messages and voicemail after being told to stop by [Zigan] herself, coworkers, and [Zigan’s] father. [Zigan] was reasonably unsettled and frightened by the messages.” This finding is supported by the testimony of Zigan’s sister that Gray repeatedly contacted Zigan and Zigan’s relatives in an attempt to reach Zigan. Zigan also attached to her HRO petition a list of approximately 30 alleged calls, screenshots of four transcribed voicemails from Gray, and a letter sent to her by Gray.

Gray claims that the findings are not supported by the record because there was only one text message that could be considered intrusive, and he did not go to Zigan’s workplace on September 4 and wait by her car. However, based on the record, the district court did not clearly err in finding that Gray engaged in repeated intrusive or unwanted acts or words and that these acts had a substantial adverse effect or intent to adversely affect Zigan’s safety, security, or privacy.

Affirmed.