

*This opinion is nonprecedential except as provided by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
A21-1703**

Brita Springstead,
Appellant,

vs.

Allen Peterson,
Respondent.

**Filed September 6, 2022
Affirmed
Segal, Chief Judge**

Crow Wing County District Court
File No. 18-CV-21-3611

Brita J. Springstead, Brainerd, Minnesota (pro se appellant)

Edward R. Shaw, Ed Shaw Law, Brainerd, Minnesota (for respondent)

Considered and decided by Smith, Tracy M., Presiding Judge; Segal, Chief Judge;
and Smith, John, Judge.*

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from the district court's dismissal of appellant's petition for a harassment restraining order, appellant argues that the district court erred because (1) the record supports that respondent engaged in unlawful harassment; (2) respondent is an attorney

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

and the district court should have applied the Minnesota Rules of Professional Conduct in evaluating whether respondent's conduct constituted harassment; (3) appellant was not provided adequate notice of witnesses who would testify on behalf of respondent; and (4)the district court was biased. We affirm.

FACTS

On October 1, 2021, appellant Brita Springstead filed a petition for a harassment restraining order (HRO) against respondent Allen Peterson. Peterson is an attorney and, during the time period relevant to the petition, represented Springstead's ex-boyfriend, R.G., in two cases involving Springstead.¹

A referee held a hearing on the petition in November 2021. Springstead's evidence and testimony at the hearing focused on two conversations she had with Peterson and two incidents at Springstead's residence. The first conversation occurred in June 2021, when Peterson called Springstead to discuss the two cases involving Springstead and his client R.G. Springstead recorded the call and submitted a copy of the recording into evidence. In the phone call, Peterson identified himself, informed Springstead that he represented R.G., and asked Springstead if she had an attorney. Springstead replied that she did have an attorney and was not comfortable talking with Peterson until she spoke with her attorney. Springstead told Peterson that she would not give him the name of her attorney because she was not sure whether her attorney was representing her in the OFP case. The

¹ Springstead and R.G. have a minor child together. In June 2021, Springstead filed a petition on behalf of the child for an order for protection (OFP) against R.G. Peterson represented R.G. in that case and in a custody-modification matter involving the child.

phone call lasted four and one-half minutes. The second conversation occurred at a hearing in July 2021 in the child-custody case. Springstead, who was not represented by counsel at the hearing, told Peterson that she preferred that he communicate with her by email because during their phone conversation she told him that she “didn’t feel comfortable talking to him multiple times and he kept pushing.”

Regarding the two times Peterson was at Springstead’s residence, the first occurred in August 2021 when Peterson went to Springstead’s residence to serve her with motion papers related to the child-custody matter. Springstead testified that it was “an extremely uncomfortable situation,” that she and her child were scared and had “fear of him,” and that he was in her garage. The second visit occurred in October 2021, when Peterson went to Springstead’s residence for a child exchange between R.G. and Springstead. Springstead submitted into evidence a short video recording in which she can be heard telling Peterson that his vehicle cannot be at her house in the future and Peterson responds that is “not right” and is “wrong.” According to Springstead, Peterson did not leave until eight minutes after she told him to leave her residence.

Peterson acknowledged that the above-described incidents occurred but argued that they did not constitute harassment. Peterson testified that he went to Springstead’s residence in August 2021 to personally serve her with motion papers related to the child-custody matter because he was concerned that she would raise complaints about other service methods. He testified that he and his coworker were looking for her residence when he saw Springstead’s car. As he approached the car, he saw Springstead standing by the car. According to Peterson, Springstead saw him, went into her garage, and hit the door-

close button, at which time he called her name and “threw [the documents] like a Frisbee into her garage as she closed the door.” He testified that “[a]t no point did [he] step into her garage.” His coworker similarly testified that Peterson did not go inside the garage and that his only communication was when Peterson said Springstead’s name before tossing the motion papers to Springstead under the garage door.

The second time Peterson was at Springstead’s residence, in October 2021, R.G. testified that he wanted someone at the child exchange as a witness and that his girlfriend usually went with him to child exchanges but was unable to accompany him that day. R.G. then asked Peterson to be present. According to R.G., the child exchange took place at a parking lot in the complex where Springstead lived and, during the exchange, Peterson “just stood there” and “basically said nothing until [Springstead] went up to him.” R.G. further testified that Peterson tried to leave after Springstead told him to, but Springstead followed Peterson to his vehicle, told him they were “going to talk about this now,” and would not let him leave. Peterson testified that he did not speak to Springstead during the exchange and just “stood there from afar” after the exchange. Peterson confirmed that Springstead approached him as he returned to his vehicle and would not let him leave.

Following the hearing, the referee recommended that the petition be dismissed. The district court confirmed the recommendation and dismissed the petition for an HRO based on the determination that Springstead “failed to meet the statutory requirement(s) to grant an order herein.” Springstead appeals.

DECISION

We review a district court's decision on whether to grant an HRO for abuse of discretion. *See Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). We review factual findings for clear error, giving due regard to the district court's credibility determinations. *Id.* at 843-44.

Springstead argues that the district court erred in dismissing her petition for an HRO because she demonstrated that harassment occurred, the district court failed to consider the rules of professional conduct when assessing Peterson's conduct, the referee committed evidentiary errors that denied her a fair trial, and the district court was biased. We address each argument in turn.

A. Sufficiency of Evidence of Harassment

A district court may issue an HRO if the court finds that there are reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3) (2020). "Harassment" is defined, 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." Minn. Stat. § 609.748, subd. 1(a)(1) (2020). Springstead argues that her evidence established that Peterson engaged in harassment under the statute and that the district court erred by dismissing the petition. We are not persuaded.

In *Dunham v. Roer*, this court observed that a finding of harassment "requires both objectively unreasonable conduct or intent on the part of the harasser and an objectively

reasonable belief on the part of the person subject to harassing conduct.” 708 N.W.2d 552, 566-67 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006); *see also Peterson v. Johnson*, 755 N.W.2d 758, 764 (Minn. App. 2008). Here, Springstead has failed to demonstrate objectively unreasonable conduct or intent by Peterson.

Springstead relies on the following as the basis for her harassment claim: (1) the June phone call where Peterson called to find out if Springstead was represented by a lawyer; (2) a conversation at a court hearing; and (3) two instances when Peterson was at Springstead’s residence, once to serve her with court papers and once to observe a child exchange between Springstead and Peterson’s client. As to the June phone call, Springstead testified at the HRO hearing that she felt Peterson was “very pushy” during the conversation. But while Peterson did repeat some of his questions, this was at least in part because Springstead refused to tell Peterson the name of her attorney. During the call, Peterson accurately conveyed to Springstead that, if she was represented, he could not speak with her directly. *See* Minn. R. Prof. Conduct 4.2 (stating that “a lawyer shall not communicate about the subject of [a] representation with a person the lawyer knows to be represented by another lawyer”). He went on to explain that there were scheduling matters that needed to be discussed in the OFP and custody-modification matters. Peterson thus had a legitimate reason for contacting Springstead and the content of the call was consistent with that reason. In addition, nothing else appears to have been objectively unreasonable about Peterson’s communications during the call.

With regard to Springstead’s request that Peterson contact her by email, Springstead advised Peterson of that preference at the July 2021 hearing. The record supports that

Peterson honored that request. This again fails to persuade us of any error by the district court.

Similarly, the record fails to demonstrate error by the district court in connection with the two instances when Peterson was at Springstead's residence. During the first instance, when Peterson personally served Springstead with motion papers, Peterson's only communication with Peterson was to say her name as he threw the papers to her while she closed the garage door on him. Springstead alleged that Peterson entered her garage, but both Peterson and his coworker testified that Peterson never went inside. Peterson also offered a reasonable explanation for his decision to personally serve Springstead with the motion papers even though personal service was not required. Peterson explained that Springstead had previously complained about a different method of service.

As to the second instance, when Peterson attended the child exchange, R.G. corroborated Peterson's testimony. R.G. confirmed that he asked Peterson to be present because R.G. felt he "just need[ed] a witness" because "it's her word against mine." R.G. also corroborated Peterson's testimony that Peterson attempted to leave after Springstead told him to, but that she would not let him.

The record thus fails to support Springstead's claim that Peterson's conduct crossed the line from objectively reasonable conduct to harassment. Accordingly, the district court did not abuse its discretion in determining that Springstead "failed to meet the statutory requirement(s)" to warrant the grant of an HRO.

B. Minnesota Rules of Professional Conduct

Springstead next argues that the district court erred because it “did not properly apply nor consider the Minnesota Rules of Professional Conduct (i.e., Rule 8.4) in regard to [Peterson’s] behavior.”² First, Springstead did not raise this issue below, and appellate courts generally will only consider issues argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Additionally, there is no support for Springstead’s contention that the rules of professional conduct are applicable to her claims. Even if Peterson’s conduct had violated the rules of professional conduct, this would not necessarily equate to harassment under Minn. Stat. § 609.748 (2020). The legal standards for issuance of an HRO must be satisfied regardless of whether the person against whom the petition is brought may have also violated any professional rules.

Finally, the only provision of Minn. R. Prof. Conduct 8.4 that relates to harassment states that “[i]t is professional misconduct for a lawyer to . . . harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, status with regard to public assistance, ethnicity, or marital status in connection with a lawyer’s professional activities.” Minn. R. Prof. Conduct 8.4(g). Springstead never alleged that Peterson harassed her on the basis of one of those protected classes. The district court therefore did not err in failing to consider or apply the rules of professional conduct.

² Minn. R. Prof. Conduct 8.4 identifies what constitutes professional misconduct for a lawyer.

C. Alleged Evidentiary Errors

Springstead also argues that she received a “very unfair trial” due to “legal error” that occurred during the hearing. She asserts that she “was unaware that any witnesses would be present and witness lists were not submitted prior to the hearing,” that she objected to this but the witnesses were permitted to testify, and that she “did not have any way to bring in her own witnesses . . . , nor was she prepared at all to cross-examine.” Springstead provides no legal authority to support her suggestion that Peterson was required to provide a witness list prior to the hearing on the petition for an HRO. As Peterson notes, Minn. R. Civ. P. 26.01 contains several disclosure requirements regarding the identification of potential witnesses in civil cases, but “harassment proceedings” are explicitly exempted from these disclosure requirements. Minn. R. Civ. P. 26.01(a)(2)(M); *see also Brunner v. Harper*, No. A17-0146, 2017 WL 3974404, at *2 (Minn. App. Sept. 11, 2017) (rejecting the argument that a party was required to provide a witness list prior to a hearing on a petition for an HRO; cited for its persuasive value). Peterson was therefore not required to provide Springstead with a witness list before the hearing, and the witnesses were properly permitted to testify.

There is also no support for Springstead’s assertion that she “did not have any way to bring in her own witnesses.” Springstead did not call any witnesses, but nothing in the record suggests that she was prevented from doing so. And the Notice of Remote Zoom Hearing provided to Springstead by the court specifically referenced witnesses. The notice included the following statement: “The Judge needs to see you and any witnesses you may

have for this case.”³ Thus, the instructions expressly referenced “any witnesses [Springstead] may have,” which, if nothing else, placed Springstead on notice that she could present testimony from witnesses at the hearing. The record therefore belies her contention that there was no way for her to call her own witnesses.

D. Alleged Bias

Finally, Springstead argues that the district court was biased. An appellate court objectively reviews the facts and circumstances surrounding a claim of judicial bias. *See State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008). We presume, however, that district court judges discharge their judicial duties in a proper manner. *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998). That presumption may be overcome, but only if the party alleging bias adduces evidence of favoritism or antagonism. *Id.* Adverse rulings are not a basis for imputing bias to a judge. *Olson v. Olson*, 392 N.W.2d 338, 341 (Minn. App. 1986).

The district court’s order dismissing the petition for an HRO includes the statement: “This does not modify any current conditions of release ordered in any criminal file.” Springstead asserts that the statement is a reference to her criminal history and “is a clear jab at [her] and indicative of prejudicial bias.”⁴ We are not persuaded. The statement was

³ The hearing was later rescheduled, and the district court issued a second notice with the same instructions.

⁴ The record includes a criminal complaint charging Springstead with various crimes stemming from an incident in which she falsely accused a different ex-boyfriend of kidnapping her. Springstead pleaded guilty to the charge of filing a false police report and received a stay of adjudication.

included in the paragraph explaining that the matter was being dismissed, that any ex parte order issued was vacated, and that the order did not affect any conditions of release. The reference thus appears to be no more than a general advisement of the legal ramifications of the dismissal of the petition and not evidence of judicial bias. Additionally, at one point during the hearing, Peterson brought up Springstead's criminal history and the referee sustained Springstead's objection to the testimony. Thus, there is no evidence to suggest bias by either the referee or the district court. And Springstead's general claim that she "has repeatedly experienced injustices in her hometown" is insufficient to establish bias. *See id.* (stating that adverse rulings are insufficient to impute bias).

Springstead failed to establish that Peterson's actions amounted to harassment, and her assertions of legal error are without merit. The district court did not therefore abuse its discretion in dismissing Springstead's petition for an HRO.

Affirmed.