This opinion is nonprecedential except as provided by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
A22-1493

Luisa Petrona Branscum,
Appellant,

vs.

Justin Dakota Branscum,
Respondent.

Filed April 17, 2023
Affirmed
Johnson, Judge

Carver County District Court
File No. 10-CV-22-755

Alyssa Nguyen, Nguyen Firm, L.L.C., St. Paul, Minnesota (for appellant)

Justin Branscum, Chaska, Minnesota (*pro se* respondent)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Appellant petitioned the district court for a harassment restraining order. After an evidentiary hearing, the district court denied the petition. We affirm.

FACTS

In August 2022, Luisa Petrona Branscum petitioned the district court on behalf of her seven-year-old child for a harassment restraining order (HRO) against her then-

estranged husband, Justin Dakota Branscum, who is the father of the child. Luisa stated in the petition that she and Justin were in the process of getting a divorce. Luisa alleged that Justin used threats to cause their child to falsely claim that Luisa's boyfriend was abusing the child. Luisa requested an HRO to protect only the child.

The district court promptly issued an *ex parte* HRO, which temporarily prohibited Justin from harassing the child, from having contact with Luisa, and from having contact with the child except for supervised parenting time. On the following day, Justin requested a hearing on the petition, which was scheduled for the following week. After a multi-day hearing on both the HRO petition and a motion for temporary custody in the parties' dissolution case, the district court filed an order providing for temporary interim relief in both cases and requesting written arguments from the parties.

After the deadline for filing written arguments, the district court filed a three-page order. The district court resolved the issues raised by the HRO petition in one paragraph, as follows:

> The Court finds that Ms. Branscum has not met the statutory burden required for an HRO. The allegations do not meet the requirements of Minn. Stat. § 609.748. While the behavior of Mr. Branscum is concerning, it does not have a substantial adverse effect on the safety, security, or privacy of Ms. Branscum or the minor child. The ex parte HRO is therefore dismissed.

Luisa appeals. Justin has not filed a responsive brief that complies with the rules governing the form and service of appellate briefs. *See* Minn. R. Civ. App. P. 125.04, 132.04. Nonetheless, we will determine the appeal on the merits. *See* Minn. R. Civ. App. P. 142.03.

DECISION

Luisa argues that, for two reasons, the district court erred by denying her HRO petition.

I.

Luisa first argues that the district court erred by denying her petition on the ground that Justin's conduct did not have a substantial adverse effect on the safety, security, or privacy of either Luisa or the minor child. She contends that the district court's finding is incomplete because it does not consider whether Justin *intended* to cause a substantial adverse effect on her or the child's safety, security, or privacy. Luisa contends that she is entitled to an HRO if she proved that Justin intended such an effect, even if his conduct did not have the intended effect. Her argument is based on the statutory definition of harassment, which 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." Minn. Stat. § 609.748, subd. 1(a)(1) (2022) (emphasis added).

Luisa's argument fails for three reasons. First, she did not file a motion for amended findings in the district court. If a party believes that the district court has failed to make adequate findings of fact, "the burden is on the parties to alert the court by a motion for amended finding[s] under Minn. R. Civ. P. 52.02." *Frank v. Illinois Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983). Such a motion serves to either "eliminate the need for appellate review" or, "if appellate review is sought," to "facilitate development of 'critical aspects of the record.'" *Alpha Real Estate Co. v. Delta Dental Plan*, 664 N.W.2d 303, 309

(Minn. 2003) (discussing motion for new trial) (quoting *Sauter v. Wasemiller*, 389 N.W.2d 200, 201 (Minn. 1986)). If an appellant did not move for amended findings in the district court, the appellant has forfeited the argument that the district court's findings are inadequate and that the appellate court should remand for adequate findings. *See Anderson v. Peterson's N. Branch Mill, Inc.*, 503 N.W.2d 517, 518-19 (Minn. App. 1993) (declining to review adequacy of findings and conclusions of law because appellant did not move for amended findings); *Pacific Mut. Door Co. v. James*, 465 N.W.2d 696, 701 (Minn. App. 1991) (same); *Love v. Amsler*, 441 N.W.2d 555, 560 (Minn. App. 1989) (same), *rev. denied* (Minn. Aug. 15, 1989).

Second, Luisa has not provided this court with a transcript of the evidentiary hearing. In any appeal, the appellant is responsible for ordering and submitting any transcripts that are necessary for appellate review. Minn. R. Civ. App. P. 110.02, subd. 1. If an appellant fails to submit a transcript, this court cannot consider any arguments that would require a review of a transcript. *See, e.g.*, *Godbout v. Norton*, 262 N.W.2d 374, 376 (Minn. 1977); *Custom Farm Servs., Inc. v. Collins*, 238 N.W.2d 608, 609 (Minn. 1976); *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968); *Collins v. Waconia Dodge, Inc.*, 793 N.W.2d 142, 146 (Minn. App. 2011), *rev. denied* (Minn. Mar. 15, 2011); *Fritz v. Fritz*, 390 N.W.2d 924, 925 (Minn. App. 1986). In her brief, Luisa argues that the evidence would support a conclusion that Justin intended to cause a substantial adverse effect on her and the child's safety, security, or privacy. Without a transcript, we are unable to evaluate that argument and to determine whether it is correct.

Third, other parts of the district court record indicate that Luisa did not argue to the district court that Justin *intended* to cause a substantial adverse effect on her and the child's safety, security, or privacy. In the memorandum of law she submitted after the evidentiary hearing, Luisa argued only that Justin's conduct actually had a substantial adverse effect on herself and the child. It appears that the district court rejected that argument. Luisa cannot establish that the district court erred by not making a finding on a factual issue that she apparently did not raise.

Thus, Luisa has not established that the district court erred by denying her HRO petition on the ground that Justin's conduct did not have a substantial adverse effect on the safety, security, or privacy of Luisa or the minor child.

II.

Luisa also argues that the district court erred by not drawing an adverse inference against Justin based on his invocation of the Fifth Amendment right against self-incrimination, which he apparently exercised because he had been criminally charged with a violation of the *ex parte* temporary HRO.

In support of this argument, Luisa cites *Baxter v. Palmigiano*, 425 U.S. 308 (1976), and argues that, because Justin refused to answer questions related to the HRO, the district court "should have made adverse inferences in its findings as required in *Baxter*." But the *Baxter* opinion does not suggest, let alone hold, that a court is *required* to draw an adverse inference if a party to a civil matter invokes the Fifth Amendment right against self-incrimination. The *Baxter* Court held merely that "permitting an adverse inference to be drawn from an inmate's silence at his disciplinary proceedings is not, on its face, an invalid

practice." *Id.* at 320; *cf. Griffin v. California*, 380 U.S. 609, 612 (1976) (holding that instruction allowing jury to draw adverse inference in criminal trial violated defendant's Fifth Amendment right against self-incrimination). The *Baxter* Court's holding was based on the premise that, under state law, "an inmate's silence in and of itself is insufficient to support an adverse decision by the Disciplinary Board." 425 U.S. at 317. In another civil case concerning an assertion of the Fifth Amendment right against self-incrimination, this court stated, "Drawing adverse inferences from [the respondent's] refusal to testify in a civil matter is permitted *but not mandatory*." *In re Recommendation for Discharge of Kelvie*, 384 N.W.2d 901, 906 (Minn. App. 1986) (emphasis added). To the extent that Luisa argues that the district court should have exercised its discretion by drawing an adverse inference, her argument fails because she has not provided the court with a transcript of the evidentiary hearing, which would be necessary to review the district court's exercise of discretion.

Thus, Luisa has not established that the district court erred by not drawing an adverse inference against Justin based on his invocation of the Fifth Amendment right against self-incrimination.

Affirmed.