

*This opinion is nonprecedential except as provided by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
A24-0141**

Susan Patricia Evans,
Respondent,

vs.

Aaron Lee Couch,
Appellant.

**Filed September 23, 2024
Affirmed
Wheelock, Judge**

Pope County District Court
File No. 61-CV-23-205

Susan Patricia Evans, Glenwood, Minnesota (pro se respondent)

Stephen M. Harris, Meyer Njus Tanick, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Smith,
John, Judge.*

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges the grant of respondent's petition for a harassment restraining order (HRO) against him. Because the district court did not err by finding that appellant

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

sent multiple text messages to respondent and that appellant's behavior constituted harassment, and because the judge did not demonstrate bias, we affirm.

FACTS

In June 2023, respondent Susan Patricia Evans received unwanted text messages and calls from a phone number ending in 6141. Evans identified the 6141 phone number as belonging to appellant Aaron Lee Couch based on her previous contact with him from that number. Evans petitioned for an HRO against Couch on June 16, 2023, and alleged that Couch "continued to try to sleep with [her], no matter how many times [she had] asked him to leave [her] alone." She also alleged that Couch threatened to file a police report and a child-protection report and to contact her probation officer and the prosecuting attorney in her criminal case. Evans expressed that she was "afraid that he will show up at [her] apartment and either harass [her] or try to take [her daughter]" from her. The district court granted an ex parte HRO the same day, and Couch requested a hearing.

Both Couch and Evans were self-represented at the hearing. Evans submitted as exhibit 1 a 13-page document containing copies of Couch's numerous text messages to her that included repeated propositions to engage in sexual acts, threats to contact law enforcement, and one image of male genitalia. Throughout the text messages, Evans repeatedly asked Couch to stop contacting her.

At the hearing, Evans testified that Couch's messages made her "feel dirty" and unsafe and that her children are "scared to be at [her] house" because of Couch's behavior. Evans also submitted as exhibit 2 a text-message exchange between Evans's husband J.E. and Couch, about which J.E. testified. During his testimony, Couch admitted to

participating in that exchange. J.E. also testified that, before they exchanged messages, he received “a threatening and harassing voicemail from Mr. Couch” addressing J.E.’s “rights” in “the [custody] situation that was going on with [Evans].”¹ J.E. described Couch as “highly educated and good at manipulating” and testified that he believed Evans had reason to fear Couch given Couch’s conduct and personality. During cross-examination, Couch asked J.E. about exhibits 1 and 2:

COUCH: [J.E.], does the phone number that is presented in exhibit one match the phone number that is presented in exhibit two?

J.E.: I will have to look. I still have it on my phone.

COUCH: It does not.

J.E.: It does not.

Neither exhibit included the phone numbers associated with the text messages.

Couch presented four witnesses at the hearing, including himself. First, Couch’s ex-wife testified that she did not think Couch and Evans had a relationship or any contact. Couch then asked her to examine the photo of male genitalia sent to Evans from the 6141 phone number that was included in exhibit 1 and to testify whether the image matched Couch’s genitals, but she responded, “I don’t know. I don’t know. I’m sorry, I can’t answer that question.” Next, Couch called his brother, A.S., who testified that Evans had fabricated or falsely created evidence against A.S. in another case. On cross-examination, A.S. admitted that he was unsure whether he had documentation or evidence to support his assertion and never provided any to the district court during the pendency of the matter. Couch’s third witness was a female friend who testified that Couch was very upset when

¹ Evans shares a daughter with Couch’s brother, A.S.

he received the HRO notice and that the messages in exhibit 1 do not match the style of text-message exchanges that she has with Couch.

Finally, Couch testified. He explained that he would not and has not changed his phone number because it is necessary that people know how to reach him, especially for work. He also expressed frustration with the proceeding and argued that he never was and never will be attracted to Evans. He testified that he had not had contact with Evans “in more than twelve years.” At the end of the proceedings, Couch asked the district court about options that would be available to him if he could “prove that the text messages are fabricated.” He also stated on the record his intent to pursue litigation against “everybody involved,” in response to which the judge inquired whether Couch was threatening the court.² Couch assured the court that he was not.

The district court left the record open for Couch to submit phone records. The phone carriers responded to subpoenas by providing the call records and text-message records from April through July 2023 for Couch’s phone number ending in 1488 and Evans’s

² The exchange went as follows:

COUCH: I would like it to be placed on a record, just—just for my records, that if false findings are presented and there is proof that these allegations were fabricated, just for the record and for my evidence purposes, there will be litigation pursued for everybody involved.

THE COURT: Mr. Couch, are you making a threat?

COUCH: No.

THE COURT: To the court?

COUCH: That is not a threat, Your Honor. I have read up on Minnesota state statutes on criminal false reporting and criminal defamation of character, which I do believe both are presented here.

phone number. The records did not include the contents of the messages, and no records were provided for the 6141 phone number.

In November 2023, the district court filed its findings and order granting the HRO. Specifically, the district court found the following:

- Couch “repeatedly sent text messages and sent explicit photos after being asked not to have further contact”;
- Couch “made threats to have [Evans] jailed or have her children taken from her”;
- Evans’s phone records show that she “received 60-120 texts a day from June 3-June 14, 2023, the date range at issue,” from the 6141 phone number;
- Couch admitted to knowing that the messages in exhibits 1 and 2 did not come from the same number even though the phone numbers were not listed on the exhibits;
- Couch admitted to sending the text messages to J.E. in exhibit 2 that contain threats and posturing, and at the hearing, Couch acknowledged that J.E. told Couch not to contact him anymore, but Couch “felt that his messages to [J.E.] were not harassing such that it did not matter”;
- Couch’s “demeanor was arrogant and self-serving during his testimony and not credible”; and
- Evans’s “demeanor was focused, humble and candid and the Court found her credible.”

The district court determined that these findings provided “reasonable grounds to believe that [Couch] has engaged in harassment which has or is intended to have a substantial adverse effect on safety, security, or privacy of [Evans],” and therefore, it granted the HRO after the hearing.

Couch appeals.

DECISION

Couch argues that the district court abused its discretion when it granted Evans’s petition for an HRO. Specifically, Couch asserts that Evans’s evidence contained

unsubstantiated allegations, including her assertion that the 6141 phone number belonged to him, that Evans failed to meet her burden of proof, and that the district court was biased against him.³ We are not persuaded.

We review a district court's decision to grant an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). "[T]his court will reverse the issuance of a restraining order if it is not supported by sufficient evidence." *Id.* at 844. We do not set aside a district court's findings of fact unless they are clearly erroneous. *Id.* at 843-44. When reviewing findings of fact for clear error, appellate courts do not weigh the evidence, engage in fact-finding, or reconcile conflicting evidence; rather, they consider all the evidence and determine whether "the evidence reasonably supports the decision." *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021).

A. The record supports the district court's determination that Couch contacted Evans using the 6141 phone number.

Couch argues that Evans presented insufficient evidence to support the district court's conclusion that he contacted Evans using the 6141 phone number because she provided only her own testimony that the number was his. Couch's primary argument is that the 6141 phone number cannot be his because the phone records for his cell phone ending in 1488 show that he was on the phone "continuously with a few calls from approximately 2:33 p.m. on June 3 until 3:04 p.m. on June 3. At the same time, the operator

³ Evans does not participate in this appeal, and this case proceeds on the merits pursuant to Minn. R. Civ. App. P. 142.03.

of the 6141 number was sending multiple text messages . . . at 2:33 p.m., 2:40 p.m., 2:41 p.m., and 3:00 p.m.”

The district court credited Evans’s testimony and found Couch’s testimony not credible. *See Kush*, 683 N.W.2d at 843-44 (stating that we defer to the district court’s credibility determinations). The district court determined, based on the evidence presented, that Couch sent the messages from the 6141 phone number.

“A district court must base its findings in support of a restraining order on testimony and documents properly admitted.” *Id.* at 844. We give deference “to the district court’s opportunity to judge the credibility of witnesses.” *Id.* at 843-44. Testimony is evidence. *Black’s Law Dictionary* 696 (12th ed. 2024) (defining “evidence”). As a general rule, a district court may make factual findings based on testimony alone, even when the parties present conflicting testimony. *See Hamilton v. Hamilton*, 396 N.W.2d 91, 94 (Minn. App. 1986) (affirming district court findings based “entirely [on] conflicting testimony”). The district court is not required to solicit evidence other than testimony, and parties are not required to submit nontestimonial evidence to corroborate their testimony. *See Quinn v. LMC NE Minneapolis Holdings, LLC*, 972 N.W.2d 881, 889 (Minn. App. 2022) (rejecting the appellant’s argument that evidence did not support findings of fact because the respondent “provided no proof beyond her bare testimony”), *rev. granted* (Minn. June 29, 2022) *and appeal dismissed* (Minn. Feb. 17, 2023).

Here, the record supports the district court’s determination that Couch used the 6141 phone number to contact Evans. Evans testified at the hearing that she knew the messages from the 6141 phone number came from Couch because it was a phone number that he

previously had used to contact her. She also testified that Couch had “changed his number three times—since—messaging [her].” We also observe that it is not impossible for a person to do multiple things while on a phone call or to operate multiple phones simultaneously. Thus, we are not persuaded by Couch’s argument that he could not have been sending messages from the 6141 phone number simply because records show that the 1488 phone number was engaged in calls around the same time.

The content of the messages contained in exhibit 1 also supports the district court’s determination that Couch sent the messages from the 6141 phone number.⁴ The messages are sent by someone who identifies themselves as the brother of a man who has a daughter with Evans. Couch’s brother, A.S., shares a daughter with Evans. The exhibit also includes a screenshot of another text conversation that, from the context, appears to be between A.S. and another person about removing Evans’s daughter from her, demonstrating that whoever operated the 6141 phone number texted with A.S. about Evans.

We conclude that the record supports the district court’s determination that Couch contacted Evans using the 6141 phone number, and we discern no clear error by the district court here.

⁴ Messages from the 6141 phone number say, “My brother will be picking up my niece at the sheriffs office today at 5:30pm if you refuse to drop her off there law enforcement will be contacted. End of story,” and, “Nope I’m on my way . . . to meet with [A.S.] and his attorney at 4 since u wanna play games and dump him your going to see a mean side of [A.S.]”

B. The district court did not err by determining that Couch's conduct constituted harassment.

Couch next argues that, even if we affirm the district court's finding that he sent the messages to Evans from the 6141 phone number, that conduct does not satisfy the statutory definition of harassment. Couch argues that Evans sent "provocative" messages to the 6141 phone number, that she responded to the messages from that number, and that, therefore, the messages to Evans from the 6141 phone number were "obviously significant consensual communications" that cannot have an adverse effect and constitute harassment.

The district court found that Couch asked Evans "for sexual favors several times even after being informed to stop," "repeatedly sent text messages and sent explicit photos after being asked not to have further contact," and "made threats to have [Evans] jailed or have her children taken from her." The district court also found that the messages from Couch to J.E. that Couch admitted to sending were messages that "contain[ed] threats and posturing." The district court's order explained that Couch's actions provided reasonable grounds to support the determination that Couch engaged in harassing behavior with the intent that the behavior "have a substantial adverse effect" on Evans.

The HRO statute defines harassment 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) (2022). This requires that (1) there are repeated incidents and (2) the incidents have a substantial adverse effect on the recipient. *Dunham v. Roer*, 708 N.W.2d

552, 566 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006). The statute “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.” *Id.* at 567. Objectively unreasonable conduct includes conduct that “goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect on another’s safety, security or privacy.” *Kush*, 683 N.W.2d at 846. Statements that are merely argumentative or inappropriate do not rise to the level of harassment. *See Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000) (concluding that, when reading statements in context, an “inappropriate and argumentative” statement may not be “intended to adversely affect the safety, security, or privacy” of another).

The record provides ample support for the district court’s finding that Couch engaged in repeated incidents of unwanted acts. Evans’s petition alleged that Couch repeatedly sent her explicit pictures, requested sexual favors, and continued to contact her after she asked him to stop. Evans submitted evidence that included text-message exchanges with the 6141 phone number of attempts to solicit sexual acts from her, a picture of a man’s genitalia sent to her, and multiple requests that Couch stop communicating with her. Even if, as Couch claims, he and Evans had consensual communication at some point, the exhibits and testimony provided are sufficient to support a determination that Couch engaged in harassment.

Couch’s conduct is consistent with conduct that, we concluded, constituted harassment in other cases. In *Bjerke v. Flomo*, we concluded that sending multiple unwanted text messages and making phone calls over the course of 12 hours met the

definition of “repeated incidents” of harassment and affirmed an HRO based on that conduct. No. A19-0094, 2019 WL 4927070, at *3 (Minn. App. Oct. 7, 2019).⁵ In another case, *Peterson v. Meyer*, we concluded that repeatedly sending messages over several days after being told to stop demonstrated multiple instances of harassment. No. A18-1185, 2019 WL 2168770, at *4 (Minn. App. May 20, 2019), *rev. denied* (Minn. Aug. 6, 2019). Here, the district court found that Couch sent 60-120 text messages per day from June 3 through June 14, 2023, supporting its determination that there were “repeated incidents,” and it found that Evans repeatedly asked Couch to stop, supporting its determination that the behavior was unwanted. We conclude that the district court did not err by determining that Couch’s behavior met the first part of the definition of harassment because this behavior demonstrates that Couch engaged in repeated incidents of unwanted acts.

Turning to the second part of the definition of harassment, the record also supports the district court’s finding that the repeated incidents of unwanted acts had “a substantial adverse effect” on Evans’s safety, security, or privacy. Evans’s petition alleged that Couch has “threatened to do everything in his power to take [her] kids away from [her] and have [her] thrown in jail” and that she fears Couch will come to her home and harass her or take her daughter away. The district court found that Couch threatened Evans and continued to contact her despite her requests that he stop, and we conclude that this behavior would cause an objectively reasonable belief in Evans that Couch intended to harm her or her children.

⁵ “Nonprecedential opinions . . . may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c).

In *Kush*, we concluded that the petitioner’s testimony about the effects of the contact was enough to support the district court’s conclusion that the contact threatened the petitioner’s sense of safety, security, or privacy. 683 N.W.2d at 845. Here, the district court considered testimony from Evans about the effects of Couch’s conduct, the statements in Evans’s HRO petition, and testimony from J.E. During her testimony, Evans stated that Couch’s communications made her “feel dirty” and unsafe and that her kids are “scared to be at [her] house” because of Couch’s behavior. Therefore, the record supports the district court’s determination that Couch’s behavior threatened Evans’s sense of safety, security, or privacy such that it constituted harassment.

The record also supports the district court’s determination that Couch’s conduct toward Evans went beyond civilized conduct and threatened her sense of safety, security, and privacy. An objectively reasonable person subject to Couch’s conduct would feel that their sense of safety, security, or privacy had been threatened.

We conclude that, because Couch engaged in harassment as defined by the statute, the district court did not abuse its discretion when it granted Evans’s petition for an HRO.

C. The judge did not demonstrate bias.

Finally, Couch argues that the district court judge showed impermissible bias because the findings of fact include a description of Couch as “arrogant and self-serving.” We presume that a district court judge discharged their duties properly and observe that a previous adverse ruling does not demonstrate judicial bias; rather, the bias must be evident upon examining the record as a whole. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008).

Here, the record as a whole is devoid of bias. Couch argues that the judge disliked him and that, therefore, her decision to issue the HRO was biased and not supported by the record. But we have concluded that the record supports the district court's decision to grant Evans's HRO petition against Couch. Couch also argues that the judge wrongly characterized his statements during the hearing as a threat against the court and asserts that his statements were a natural reaction "consistent with his professed innocence" and that the judge should not have taken them personally.

We presume that the district court sets aside any "collateral knowledge and approach[es] cases with a neutral and objective disposition." *State v. Adell*, 755 N.W.2d 767, 775 (Minn. App. 2008), *rev. denied* (Minn. Nov. 25, 2008). Applying that presumption, we concluded in a nonprecedential opinion that a district court judge's characterization of a party as a "leech" and a "bloodsucker" did not demonstrate judicial bias. *Brown v. State*, No. A11-1308, 2012 WL 1253095, at *8 (Minn. App. Apr. 16, 2012), *rev. denied* (Minn. June 27, 2012). Here, the district court's characterization of Couch falls within the scope of that presumption. Couch also does not point to anything in the record to support his contention that the district court considered Couch's statement about false allegations and pursuing litigation when deciding the case. We presume that the district court set this aside; therefore, we do not discern bias.

Couch next argues that the district court refused to let his witness testify about her personal knowledge of technology, but Couch's description of what occurred is not accurate. The district court allowed Couch's witness to testify consistent with her personal knowledge. The witness appeared via videoconference, however, and when the witness's

internet connection failed, Couch chose to end his questioning. Finally, although the district court's order includes findings describing Couch's character, these descriptions do not demonstrate bias but rather provide support for the district court's credibility determinations. We reject Couch's claim of judicial bias and conclude that there is nothing to remedy.

Affirmed.