

*This opinion is nonprecedential except as provided by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
A24-0145**

Brooke Lea Simpson and OBO Minor Child,
Appellant,

vs.

Jocelyne Maldonado,
Respondent.

**Filed December 23, 2024
Affirmed
Larkin, Judge**

Ramsey County District Court
File No. 62-HR-CV-23-1046

Brooke Simpson, New Brighton, Minnesota (pro se appellant)

Jocelyne Maldonado, New Brighton, Minnesota (pro se respondent)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the district court's dismissal of her petition for a harassment restraining order against respondent neighbor. We affirm.

FACTS

On September 19, 2023, appellant Brooke Lea Simpson petitioned the district court for a harassment restraining order (HRO) against her neighbor, respondent Jocelyne

Maldonado,¹ on her own behalf and on behalf of her service dog. In her petition, Simpson alleged that Maldonado records her, watches her, and shines lights at her, especially when Simpson arrives home. Simpson claimed that Maldonado has admitted to the police that she monitors Simpson's social media and YouTube pages, has given police false information, and has made false complaints about Simpson's service dog. Simpson also claimed that she is afraid to enter or exit her home because of Maldonado's actions.

The district court denied Simpson's petition for an ex parte HRO and scheduled a hearing on her petition. At the hearing, both parties appeared pro se, and Simpson presented several videos as evidence that Maldonado had stared at Simpson, recorded Simpson, flashed lights at Simpson, and exited her home when Simpson arrived home. The district court found, from the bench, as follows:

So first the biggest issue as I see it [is] . . . who's watching who and the reality is I think both of you are watching each other. There is an incredible amount of footage from you, Ms. Simpson, of Ms. [Maldonado] and I think that Ms. [Maldonado] as she's indicated is concerned about not knowing why you're watching her and you know from your own experience and what you've testified to that the idea of someone watching you whether it's true or not, right, that idea is frightening. . . . And so the conversation that the two of you had was certainly not the most civil of conversations. You both can do better, but I don't find that it rises to the level of harassment. And because you are both equally participating it doesn't appear to be unwanted.

The second issue is about the lights, and you both live in a manufactured home community and there are no apparent streetlights. So it does appear that both of you, all residents are

¹ The record indicates that respondent's name is spelled Jocelyne Maldonado and that it is spelled incorrectly in the case caption. We use the correct spelling in the opinion. But, we do not change the case caption. See Minn. R. Civ. App. P. 143.01 (directing that the title of the action not be changed on appeal).

at the mercy of house lights, car lights, ambient light, flashlights, but you're going to have to use and depend on other lights to figure out or see what's going on. And you've pointed, Ms. Simpson, to multiple exhibits that show the shining of a flashlight and so that you've established. But the second piece of that is whether or not that unwanted act is one that is substantially adverse or has a substantially adverse effect on you. *You have testified that it is frightening to you, but there is no evidence that Ms. [Maldonado] is using her light in the way that you describe. From what I've seen in the video, Ms. [Maldonado] did not come onto your property. There's no indication she's even coming onto the sidewalk in front of your property. There's no indication that she's come up to your car or even within an arm's length of you. And so to the extent that she is using her flashlight, it's not clear that she's using her flashlight to look at you.* I believe you believe this, so your testimony I find that what you are saying that I don't think you're making it up, okay? *I believe what you're saying that you think that Ms. [Maldonado] is using her light to shine it at you. But I don't find that to be reasonable . . .* absent her shining the light at you, which I didn't see in those videos and being . . . the full property line away from you, coming in and out of her door that *I don't find that her behavior rises to a level of harassment.*

. . . .

So based on that I am going to find that you haven't met your burden of proof and I am going to dismiss this petition.

(Emphasis added.) On December 27, 2023, the district court filed an order stating: "IT IS ORDERED that the matter is dismissed."

Simpson appeals the district court's dismissal of her petition for an HRO.²

² Respondent did not file a brief in this case. This court ordered that the case shall be determined on the merits under Minn. R. Civ. App. P. 142.03.

DECISION

Simpson contends that the district court erred in dismissing her petition for an HRO. She submitted an informal pro se brief extensively describing the testimony and exhibits presented at the HRO hearing, in which assignments of error were interspersed throughout.

“The function of the court of appeals is limited to identifying errors and then correcting them.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). This court may not “usurp[] the role of the [district] court by reweighing the evidence and finding its own facts.” *Id.* This court does not “weigh the evidence as if trying the matter de novo.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (emphasis omitted) (quotation omitted).

Moreover, “on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.” *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) (quotation omitted). Additionally, issues that are not adequately briefed are waived. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn. 1982) (“This issue was not argued in the briefs and accordingly must be deemed waived.”). “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.” *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971).

Some of Simpson’s assignments of error are supported by adequate legal argument and authority, and are otherwise adequately briefed. Others are not, and we do not consider

them.³ See *Melina*, 327 N.W.2d at 20; *Schoepke*, 187 N.W.2d at 135. We review only the issues that are adequately briefed by Simpson, which are whether the district court: (1) clearly erred in making certain findings of fact, (2) made defective credibility determinations, and (3) abused its discretion in concluding that Maldonado’s alleged conduct did not rise to the level of harassment.

I.

Simpson contends that the district court clearly erred by making findings of fact that are inconsistent with the evidence she presented at the HRO hearing. Specifically, she argues that the district court erred by finding facts that are inconsistent with her evidence that Maldonado shined lights at her, that Maldonado only comes out of her home when Simpson arrives or leaves, that Maldonado “record[ed] herself antagonizing” Simpson, and that Maldonado’s behavior is unwanted.

A district court may make oral findings of fact from the bench. Minn. R. Civ. P. 52.01. “A district court’s findings of fact will not be set aside unless clearly erroneous” *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). Findings of fact are clearly erroneous “when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Kenney*, 963 N.W.2d at 221 (quotation omitted). “In applying the clear-error

³ We also do not consider Simpson’s descriptions of “[e]xhibits that were not accepted or played.” Our review is limited to the record, which includes “documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any.” Minn. R. Civ. App. P. 110.01. To the extent Simpson asserts that the district court abused its discretion by not accepting or viewing certain exhibits, those assertions are not adequately briefed. See *Melina*, 327 N.W.2d at 20; *Schoepke*, 187 N.W.2d at 135.

standard, we view the evidence in a light favorable to the findings.” *Id.* This court does not “weigh the evidence as if trying the matter de novo,” and we will not conclude that the district court erred unless “we are left with a definite and firm conviction that a mistake has been committed.” *Id.* (emphasis omitted) (quotations omitted). Finally, a finding is not clearly erroneous simply because the evidence might support a contrary finding. See *Stiff v. Associated Sewing Supply Co.*, 436 N.W.2d 777, 779-80 (Minn. 1989) (stating that “[a]lthough the record also contains testimony which, if believed, would support different findings of fact more favorable to the respondent, when the record contains credible evidence to support the fact findings and those findings support the [district] court’s conclusion,” an appellate court may not reverse just because it might have found the facts differently in the first instance).

In its findings of fact, the district court described the evidence in detail, stating that Simpson provided “an incredible amount of footage”; that Simpson presented “multiple exhibits that show the shining of a flashlight”; that based on what the district court saw “in the video, Ms. [Maldonado] did not come onto [Simpson’s] property”; that “to the extent that [Maldonado] is using her flashlight, it’s not clear that she’s using her flashlight to look at [Simpson]”; that the district court did not see Maldonado shining a light at Simpson in Simpson’s video evidence; that in “all of those videos” it appears that Maldonado “is the full property line away from” Simpson; and that if, hypothetically, “every single time that a car pulls up that Ms. [Maldonado] is looking for a family member, a friend, or a guest,” that behavior is not impermissible.

Viewing the evidence in a light favorable to the findings, the findings are reasonably supported by the evidence as a whole, and we are not left with a definite, firm conviction that a mistake was made. Thus, Simpson has not established that the district court clearly erred in its findings.

II.

Simpson challenges the district court's credibility determinations, specifically, its determinations that Maldonado was credible and that Simpson was not credible.

We do not “decide issues of witness credibility” because such issues “are exclusively the province of the factfinder.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted); see Minn. R. Civ. P. 52.01 (“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.”). A district court's credibility determinations may be implicit. See *Pechovnik*, 765 N.W.2d at 99 (“The district court's findings implicitly indicate that the district court found respondent's testimony credible. We defer to this credibility determination.”).

The district court made several findings that touch on the credibility of Simpson's and Maldonado's testimony at the HRO hearing. The court stated that it thought that Simpson was “telling [the district court] the truth” but that it did not find Simpson's beliefs about Maldonado's purpose in shining the flashlight “to be reasonable.” The court stated that it found Maldonado credible when she said she was using her phone as a light. The

court said it did not “think [it is] true” that Maldonado comes outside every single time” that Simpson drives up to her home.

Because “the court of appeals is not a trier of fact,” it may not substitute its judgment for that of the district court. *Nelson v. Schlener*, 859 N.W.2d 288, 294 (Minn. 2015). “[District] courts stand in a superior position to appellate courts in assessing the credibility of witnesses” *In re Welfare of M.D.O.*, 462 N.W.2d 370, 374-75 (Minn. 1990). There is no basis for us not to apply our usual deference to the district court’s explicit and implicit credibility determinations in this case. We therefore do not disturb the district court’s credibility findings.

III.

Simpson contends that the district court abused its discretion by concluding that Simpson’s allegations against Maldonado—even if true—do not show harassment.

The district court “may” issue an HRO if certain requirements are met, including that “the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b) (2022). As is relevant here, harassment is defined to include “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) (2022).

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.” *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *rev.*

denied (Minn. Mar. 28, 2006). 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” is objectively unreasonable. *See Kush*, 683 N.W.2d at 846.

“Ultimately, the issuance of an HRO is reviewed for abuse of discretion.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). “A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted).

As explained in section I of this opinion, Simpson has not shown that the district court’s factual findings are erroneous. Nor are we persuaded that the district court misapplied the law or made a decision that is against logic and the facts. Again, 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.” *Dunham*, 708 N.W.2d at 567. The district court explained that, because Simpson and Maldonado were “both equally participating, [Maldonado’s conduct] doesn’t appear to be unwanted.” That explanation indicates that the district court did not believe Simpson’s claim that she was frightened by Maldonado’s conduct. Indeed, as to Simpson’s beliefs about Maldonado’s conduct, the district court stated, “I don’t find that to be reasonable.”

The district court implicitly found that Maldonado’s conduct does not extend “beyond an acceptable expression of . . . civilized conduct,” instructing Simpson to “[a]ssume for argument that Ms. [Maldonado] has come out every single time that you drove up. . . . I’m not saying she is and I’m not saying that’s true, but there’s nothing

wrong with that behavior”; “it is not an abnormal nor an untoward behavior to look out your window, and to the extent that [Maldonado] does so she’s welcome to do that.” See *Kush*, 683 N.W.2d at 846. The district court further explained,

Ms. [Maldonado] is welcome to, just as you are, she’s welcome to come and go as she pleases. She can sit on her steps. She gets to use her car. She can use her phone. She can use her flashlight or not use her flashlight that is up to her, and her behavior is not abnormal. It’s simply behavior of somebody who lives in the neighborhood just like you. You come and go as you please. You stand outside as you want. You use your car as you want. You use your phone, your lights, your cameras just as you want and . . . *as you are telling me right now, you wouldn’t say there’s anything wrong with the way that you’re acting, and to that extent there’s nothing wrong with the way that Ms. [Maldonado] is acting.*

(Emphasis added.)

In the absence of a finding of an “objectively reasonable belief” on Simpson’s part and “objectively unreasonable conduct or intent” on Maldonado’s part, harassment was not established under Minn. Stat. § 609.748, subd. 1(a)(1). See *Dunham*, 708 N.W.2d at 567.

In sum, Simpson has not shown reversible error. The district court scheduled an evidentiary hearing on Simpson’s petition for an HRO, heard the evidence, listened to the arguments, explained what evidence was and was not persuasive, and explained why Simpson’s allegations did not establish that Maldonado had engaged in harassment, as defined in statute and caselaw. The district court did not abuse its discretion in doing so.

Affirmed.