

*This opinion is nonprecedential except as provided by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
A24-1875**

Daniella Marie Chavez,
Respondent,

vs.

Fei Zhan,
Appellant.

**Filed August 18, 2025
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-HA-CV-24-823

Daniella Marie Chavez, Bloomington, Minnesota (*pro se* respondent)

Charles S. Clas Jr., Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Johnson, Judge; and
Kirk, Judge.*

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Daniella Marie Chavez petitioned the district court for a harassment restraining order (HRO) against her next-door neighbor, Fei Zhan. After an evidentiary hearing, the district court found that Zhan engaged in harassment and issued an HRO. We conclude

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

that the evidence supports the district court’s finding of harassment and that the district court did not err by issuing the HRO. Therefore, we affirm.

FACTS

In August 2024, Chavez and Zhan were next-door neighbors in a condominium building in the city of Bloomington. Chavez petitioned the district court for an HRO against Zhan, alleging multiple incidents of harassment at their places of residence. The district court issued an *ex parte* temporary HRO the next day. Zhan requested a hearing on the petition. The district court conducted an evidentiary hearing in October 2024. Chavez and Zhan were the only witnesses. Chavez was self-represented; Zhan was represented by an attorney.

After the hearing, the district court filed a four-page order. The district court found that Zhan engaged in harassment in two ways. First, the district court found that Zhan “hit [Chavez] in the leg with a bag of garbage while [Chavez] was wearing a post-surgery walking boot.” Second, the district court found that Zhan “continued to run the garbage disposal for *hours* after being informed that doing so was causing a backup of sewage into [Chavez’s] condominium.” (Emphasis in original.) The district court issued an HRO, which, for a period of one year, generally forbids Zhan from contacting Chavez and specifically forbids Zhan from “touching any of [Chavez’s] property,” “looking into [Chavez’s] windows,” or “following and/or recording [Chavez].”

Zhan appeals. Chavez did not file a responsive brief. Regardless, it is this court’s duty to apply the law to the facts of the case and determine the appeal on the merits. *See* Minn. R. Civ. App. P. 142.03.

DECISION

We begin by identifying the applicable law, which provides the framework for Zhan’s arguments.

A district court may issue an HRO to require a person “to cease or avoid the harassment of another person” or “to have no contact with another person” if the court finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a), (b)(3) (2024). “Harassment,” for purposes of an HRO, is defined by statute primarily to include

[1] a single incident of physical or sexual assault . . . , [2] a single incident of nonconsensual dissemination of private sexual images . . . , or [3] 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) (2024). If a district court finds that a person has engaged in harassment, the district court “may issue” an HRO. *Id.*, subd. 5(b); *see also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 242 n.5 (Minn. App. 2003) (reasoning that “may” is permissive), *rev. denied* (Minn. Nov. 25, 2003).

This court applies a clear-error standard of review to a district court’s findings of fact concerning a petitioner’s allegations of harassment, *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004), a *de novo* standard of review to a district court’s conclusions of law, *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008), and an abuse-of-discretion standard of review to a district court’s decision to issue an HRO based on a finding that a person has engaged in harassment,

Wilson v. Wilson, 11 N.W.3d 331, 338-39 (Minn. App. 2024), *rev. denied* (Minn. Dec. 17, 2024).

Zhan’s primary argument on appeal is that the district court erred by finding that she engaged in harassment. Her argument has three parts. First, Zhan argues that the evidence of the first incident identified by the district court (the garbage-bag incident) is insufficient to prove that she engaged in a “physical assault.” *See* Minn. Stat. § 609.748, subd. 1(a)(1). Second, Zhan argues that the evidence of the second incident identified by the district court (the garbage-disposal incident) is insufficient to prove that Zhan’s conduct had “a substantial adverse effect” on Chavez’s “privacy.” *See id.* Third, Zhan argues that, assuming the garbage-bag incident was not a “physical assault,” the garbage-disposal incident alone is insufficient to support a finding of harassment because it is only a single incident, not one of multiple “repeated incidents of intrusive or unwanted acts, words, or gestures.” *See id.*

A.

We will first analyze the second part of Zhan’s argument, that the garbage-disposal incident did not have “a substantial adverse effect” on Chavez’s “privacy.” *See id.*

The district court acknowledged that “the use of the garbage disposal would not, under ordinary circumstances, be harassment.” But the district court explained that “the unique facts of this case show that [Zhan] ran it for *hours* as a way to annoy [Chavez].” (Emphasis in original.)

Zhan contends that there is insufficient evidence of “the effect” of her use of her garbage disposal. She recognizes that her use of her garbage disposal caused “flooding”

in Chavez's unit, but she asserts that "there was no further description as to how this affected" Chavez.

Chavez testified that her unit and Zhan's unit share plumbing. Chavez also testified that "when [Zhan] clogs her toilet, it doesn't come out on her end, it comes out on my end." Similarly, Chavez testified that "when [Zhan] uses her garbage disposal, it doesn't come out on her end, it comes out my sink and . . . out my walls in my kitchen." Chavez further testified that she sometimes knocked on Zhan's door to tell her what was happening in her unit and to ask Zhan to stop using her garbage disposal but that Zhan responded by calling the police to complain about Chavez. Chavez testified that, on one such occasion, Zhan responded by using her garbage disposal "for three hours." Chavez described the situation as "a nightmare."

This evidence indicates that Zhan's act caused a very unpleasant experience inside Chavez's unit. The evidence allows an inference that Zhan's use of her garbage disposal interfered with Chavez's use and enjoyment of her home and, thus, her privacy. *See Kush*, 683 N.W.2d at 843-46 (affirming finding of harassment based on respondent's posting signs on petitioner's property and making hostile and threatening oral statements on petitioner's property); *Cambronne v. Chapp*, No. A22-1492, 2023 WL 3445023, at *1-3 (Minn. App. May 15, 2023) (affirming finding of harassment based on respondent's posting signs near petitioner's home encouraging motorists to honk); *Anderson v. Weber*, No. A17-0202, 2017 WL 5243537, at *3-4 (Minn. App. Nov. 13, 2017) (affirming finding of harassment based on, among other things, respondent's spreading of animal remains on property line between parties' properties); *Janecek v. Rosenthal*, No. A16-1885, 2017 WL

2535728, at *3-4 (Minn. App. June 12, 2017) (concluding that petitioner alleged cognizable claim of harassment based on respondent’s installation of video cameras pointed toward private areas of petitioner’s home); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) (providing that nonprecedential opinions are “not binding authority” but “may be cited as persuasive authority”). Accordingly, the evidence is sufficient to prove that Zhan’s act had a substantial adverse effect on Chavez’s privacy.

B.

We continue by considering the first and third parts of Zhan’s argument, that the garbage-bag incident was not a “physical assault” and that the garbage-disposal incident, by itself, is only a single incident of an intrusive or unwanted non-physical act, word, or gesture. *See* Minn. Stat. § 609.748, subd. 1(a)(1).

The district court did not determine whether the garbage-bag incident constituted a “physical assault.” The district court reasoned as follows: “Whether the Court considers the garbage-bag incident an act of assault or an unwanted act having a substantial adverse effect on [Chavez’s] safety, security, or privacy, the result is the same: the Court finds [Zhan] harassed [Chavez].”

The district court’s reasoning is consistent with the statute, which allows for alternative means of proving harassment. Under the statutory definition, harassment may be found if a respondent engaged in either “a single incident of physical . . . assault” or “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.” *Id.*; *see also Peterson*, 755 N.W.2d at 762-66.

Given our conclusion that the garbage-disposal incident had a substantial adverse effect on Chavez's privacy, *see supra* part A, it is immaterial whether the evidence is sufficient to prove that the garbage-bag incident is a "physical assault." If the garbage-bag incident is a "physical assault," it would be an independent basis for a finding of harassment under the first part of the statutory definition. *See* Minn. Stat. § 609.748, subd. 1(a)(1). And if the garbage-bag incident is *not* a "physical assault," it could support a finding of harassment under the third part of the statutory definition because it would, in combination with the garbage-disposal incident, be one of two "repeated incidents of intrusive or unwanted acts, words, or gestures." *See id.* Zhan does not dispute that the garbage-bag incident occurred. And Zhan does not argue that the garbage-bag incident did not have a substantial adverse effect on Chavez's safety, security, or privacy. One way or another, the evidence supports the district court's finding of harassment.

Thus, the district court did not clearly err by finding that Zhan engaged in harassment. In light of that finding, the district court did not abuse its discretion by granting Chavez's petition and issuing the HRO.

Before concluding, we note that Zhan also argues that the district court erred by not providing a translator at the hearing. Zhan admits that she did not ask the district court for a translator and that the issue is being raised for the first time on appeal. "It is an elementary principle of appellate procedure that a party may not raise an issue or argument for the first time on appeal and thereby seek appellate relief on an issue that was not litigated in the district court." *Doe 175 by Doe 175 v. Columbia Heights Sch. Dist.*, ISD No. 13, 842 N.W.2d 38, 42 (Minn. App. 2014) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.

1988)). “[I]f an appellant fails to preserve an argument or issue in district court proceedings, the issue or argument is forfeited and may not be asserted in an appellate court.” *Id.* at 43. Forfeiture is especially appropriate in the circumstances of this case because, as Zhan acknowledges in her brief, the need for a translator is best determined by a judge in a district court courtroom, who can best perceive a witness’s or a party’s ability to communicate. Because Zhan did not preserve this issue by raising it in the district court, we will not address it for the first time on appeal.

Affirmed.