

*This opinion is nonprecedential except as provided by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
A24-1475**

Kryzta Ellyzabeth-Marie Martinez,
Respondent,

vs.

Zhana Jeanette Gunderson,
Appellant.

**Filed June 16, 2025
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-HA-CV-24-185

Kryzta Ellyzabeth-Marie Martinez, St. Paul, Minnesota (pro se respondent)

Zhana Gunderson, Alexandria, Minnesota (pro se appellant)

Considered and decided by Bjorkman, Presiding Judge; Harris, Judge; and
Klaphake, Judge.*

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges a harassment restraining order (HRO), arguing that
(1) respondent failed to prove harassment, (2) the district court engaged in improper

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

ex parte communication with respondent, (3) the district court improperly removed appellant's witness from the courtroom during the evidentiary hearing, (4) the district court prevented appellant from presenting a defense, and (5) the judge was biased against appellant. We affirm.

FACTS

On June 17, 2024, respondent Kryzta Ellyzabeth-Marie Martinez filed a petition for an HRO against appellant Zhana Jeanette Gunderson, alleging that Gunderson had been sending her harassing messages, mostly by email, for months. She said that she had been working with Gunderson “to get a notary signed for money [Gunderson] loaned [her],” and when the process was interrupted by Martinez being hospitalized, Gunderson started sending “derogatory and false accusatory messages to emotionally antagonize [her].”

The district court granted an ex parte HRO and, upon Gunderson's request, scheduled an evidentiary hearing. At the hearing, Martinez presented six exhibits containing emails between the parties (mostly emails that Gunderson sent her) between January 2024 and the day she filed the HRO petition. In the emails, Gunderson repeatedly accuses Martinez of stealing money from her and hundreds of other people; disparages Martinez by calling her liar, thief, con artist, scum, psychopath, worthless, narcissist, and many other names; and says that she hopes Martinez will be “punish[ed],” “haunt[ed]” by her actions, and put in an “insane asylum.” The emails continued even after Martinez objected, telling Gunderson she would not let her “continue to abuse [her] verbally.” Martinez testified about the negative effect the emails have had on her health, including disrupting her hospitalization and severely compromising her mental health.

Gunderson also testified. She acknowledged that she authored the emails, stating that she was trying to collect on a loan and initially was “very amicable with [Martinez].” When Gunderson began describing how Martinez had borrowed money from other people and not repaid it, the district court stopped her, explaining that the sole issue was whether Gunderson engaged in harassing behavior toward Martinez. The district court also stated that, because Gunderson acknowledged sending the emails with “horrible language in them,” it was finding that she did engage in harassment and did not need to receive any additional evidence.

The district court thereafter issued a written HRO, noting that Gunderson “admitted she sent the emails,” finding that Gunderson “commit[ed] various harassing acts in an attempt to collect a debt,” and prohibiting Gunderson from contacting Martinez for two years.

Gunderson appeals.¹

DECISION

A district court may issue an HRO if it finds that “there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2024). The term “harassment” 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, regardless of the relationship between the actor and the intended target.” *Id.*, subd. 1(a)(1) (2024).

¹ Martinez did not file a brief, but we consider the appeal on its merits under Minn. R. Civ. App. P. 142.03.

This definition 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).

On appeal, we review a district court’s decision whether to grant an HRO for abuse of discretion. *Borth v. Borth*, 970 N.W.2d 699, 701 (Minn. App. 2022). “A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record.” *Id.* (quotation omitted). We give “due regard” for the district court’s credibility determinations and will not disturb its factual findings unless they are clearly erroneous. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

As in the district court, Gunderson does not deny sending the many emails that prompted Martinez to seek an HRO. Rather, she contends Martinez presented “Insufficient Evidence to support [her] Claims” and that the emails she sent to Martinez do not constitute harassment because they contain “no abusive and/or foul verbiage.” This argument is unavailing. The district court found the “tenor” of Gunderson’s emails was harassing, highlighting instances of Gunderson calling Martinez things like a con artist, scumbag, and “thief without morals.” The court also noted that Martinez objected to the emails as “abusive,” expressly credited her testimony that she was “very bothered” by the emails, and found this reaction “reasonable.” And the court found that Gunderson’s awareness of Martinez’s significant mental-health issues shows that she knew the effect her emails had

on Martinez and Martinez’s “vulnerability.” This record amply supports the district court’s finding that Gunderson harassed Martinez.

Gunderson also advances four challenges related to the manner in which the district court conducted the evidentiary hearing.² First, she asserts that the judge and her law clerk spoke with Martinez in the courtroom just before the hearing began and contends this was improper ex parte communication in violation of Minn. Code Jud. Conduct Rule 2.9. But nothing in the record reflects that such an exchange occurred or that Gunderson presented her concerns about it to the district court, either during the hearing or in a subsequent motion. As such, she has not preserved the issue for our review. *Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 762 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). Moreover, Gunderson does not identify any prejudice to her from the claimed exchange, and none is apparent from the record. *See Leake v. State*, 737 N.W.2d 531, 537 (Minn. 2007) (considering whether ex parte communication was harmless error).

Second, Gunderson contends the district court improperly removed her witness from the courtroom, apparently challenging the district court’s decision to sequester the witness. A district court may sequester witnesses, even if a party does not request it. Minn. R. Evid. 615. “[E]xclusion of witnesses from the courtroom is a time-honored practice designed to prevent the shaping of testimony by hearing what other witnesses say.” *State v. Zornes*, 831 N.W.2d 609, 618 (Minn. 2013) (quotation omitted). The decision whether

² In support of these challenges, Gunderson’s brief references materials outside the record, which she moved this court to add to the record. We denied the motion and, therefore, do not consider those materials in deciding this appeal.

to sequester witnesses is left to the district court's "sound discretion." *Id.* (quotation omitted). Because Gunderson did not object to the sequestration, she has forfeited the issue. *Fiduciary Found.*, 834 N.W.2d at 762. But her challenge also fails on the merits because Gunderson identifies neither error nor prejudice in the decision to exclude her witness from the courtroom until after she and Martinez had testified.

Third, Gunderson argues that the district court impaired her defense because it did not allow her to present evidence beyond her own testimony. The district court determined that, because Gunderson admitted that she sent the harassing emails, the other evidence that she proposed to present (testimony and exhibits) was not relevant. Evidence must be relevant to be admissible. Minn. R. Evid. 402. And we will not disturb a district court's determination regarding relevance absent an abuse of discretion. *Aljubailah v. James*, 903 N.W.2d 638, 644 (Minn. App. 2017). Gunderson suggests that her other evidence would have shown that she was justified in sending the emails because Martinez owed her money. This amounts to an argument that she was justified in harassing Martinez. But the HRO statute is not concerned with motive; the sole inquiry is whether the respondent's actions "had, or were intended to have, a substantial adverse effect on the [petitioner's] safety, security, or privacy." *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004). Indeed, people are "free to express outrage" about another's actions, "[b]ut there are limits to such expressions in order to keep peace in the community." *Id.* at 846. Because the excluded evidence tends to show only that Gunderson had a reason to be upset with Martinez, not the reasonableness of her conduct in expressing her anger, the district court did not abuse its discretion by excluding it as irrelevant.

Finally, Gunderson contends the judge was biased against her. She asserts that this bias is evident from the judge interrupting her, allocating time unequally between the parties, and calling her a “nasty mean creditor.” We presume that district court judges properly discharge all judicial duties. *Hannon v. State*, 752 N.W.2d 518, 522 (Minn. 2008). And we do not impute bias from adverse rulings or critical remarks but examine the whole record for indications of favoritism or antagonism. *Byers v. Comm’r of Revenue*, 735 N.W.2d 671, 673 (Minn. 2007). We discern no such indications in this case.

The record reflects that the judge interjected at various points during the hearing to help the two self-represented parties manage their presentations of evidence. The judge also curtailed Gunderson’s presentation when she sought to present evidence that was irrelevant to the limited issue before the court. And while the transcript reflects that the district court told Gunderson that the “things that are stated in [her] e-mails [to Martinez] are really, really bad and super mean,” it does not reflect the personal insult that Gunderson claims the court levied at her. In short, our careful examination of the record reveals that the judge’s challenged statements and conduct constitute appropriate time-management efforts, discretionary evidentiary rulings, and accurate (if critical) descriptions of the evidence. They do not indicate judicial bias.

Because the record supports the district court’s finding that Gunderson’s emails to Martinez constitute harassment, and Gunderson has not demonstrated error or prejudice in the court’s conduct of the hearing, we conclude that the district court did not abuse its discretion by granting the HRO.

Affirmed.