1999 WL 993975
Only the Westlaw citation is currently available.

Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Anthony Maynard NELSON, Appellant.

No. C8-98-1920.

Nov. 2, 1999.

Affirmed, Davies, Judge. Ramsey County District Court, File No. K99827.

Attorneys and Law Firms

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John M. Stuart, State Public Defender, Sharon E. Jacks, Assistant State Public Defender, Minneapolis, MN, for appellant.

Considered and decided by SHUMAKER, Presiding Judge, and DAVIES and WILLIS, Judges.

UNPUBLISHED OPINION

DAVIES.

***1** This appeal is from a judgment of conviction for first-degree assault. *See* Minn.Stat. § 609.221, subd. 1 (Supp.1997). We conclude that any error in excluding evidence of the victim's civil lawsuit against a third party was harmless and the trial court did not abuse its discretion by admitting character evidence and by failing to instruct the jury on defense of dwelling. We therefore affirm.

FACTS

Appellant Anthony Maynard Nelson was convicted of first-degree assault for stabbing Lorenzo Madrid at La Oportunidad, a halfway house in St. Paul. La Oportunidad is a duplex and, in July 1997, two residents, Madrid and Bennie Chapman, lived upstairs. Two other residents and appellant, who was the resident manager at the time, lived downstairs. La Oportunidad served as a program for persons on probation for various offenses. Participation in the program required observing a curfew and several additional rules, including no alcohol on the premises. As the resident manager, appellant was responsible for enforcing the house rules.

On the evening of July 18, 1997, Madrid and Chapman, the upstairs residents, got into a physical conflict after drinking at a neighboring house. The conflict was resolved, but appellant then demanded that Madrid return his key to La Oportunidad.

From this point on, accounts of the evening differ. Madrid claimed that: appellant grabbed him from behind and threw him through the door of the lower-level apartment of La Oportunidad, closed and locked the door, and proceeded to push Madrid, who responded by hitting appellant; as the two continued to fight, Madrid felt a pain in his lower abdomen; feeling lightheaded, Madrid unlocked the door, stumbled down the porch steps, and blacked out. The evidence is clear that he awoke in the recovery room of Regions Hospital with three stab wounds.

Appellant testified differently, claiming that: about a half hour after the initial conflict between Madrid and Chapman, he was on the porch with Chapman when several people from the residence where Chapman had been drinking approached the pair; appellant thought the group was after Chapman so he went inside La Oportunidad, grabbed a knife from the kitchen, and hid it in his pants; when he came back on the porch someone hit him; he began to return to the house and Madrid hit him; as appellant entered the house, Madrid forced his way in, locked the door, and started hitting appellant again; Madrid next got possession of appellant's knife, but appellant knocked it out of Madrid's hand; appellant retrieved the knife after it fell to the floor and told Madrid to leave; Madrid tried to grab the knife from appellant, but appellant stabbed Madrid; Madrid then unlocked the door and went outside; after Madrid left, appellant washed the blood from his hands and threw the knife out the back door.

The four eyewitnesses agree that, as appellant was standing on the front porch, he was hit by either Madrid or someone from the neighboring residence. But the eyewitnesses disagree

as to other events surrounding the assault. Accounts as to how Madrid entered the lower level of La Oportunidad have him either falling in, entering while he was wrestling with appellant, walking in an open door, or walking in after appellant opened the door for him. Once Madrid was inside, the door was closed so none of these witnesses saw what transpired inside the residence. The next thing the witnesses saw was Madrid stumble out after he had been stabbed.

DECISION

***2** Evidentiary rulings are at the discretion of the trial court and will not be reversed absent a clear abuse of discretion. *State v. Willis*, 559 N.W.2d 693, 698 (Minn.1997). A defendant claiming that the trial court erred in admitting evidence has the burden of proving both error and resulting prejudice. *State v. Grayson*, 546 N.W.2d 731, 736 (Minn.1996). Reversal is warranted only when trial court error substantially influences the jury's decision. *Id.*

I.

Appellant claims the trial court abused its discretion and committed prejudicial error by denying him the opportunity to cross-examine Madrid about his pending civil lawsuit against La Oportunidad. In a criminal trial, defense counsel may generally "cross-examine a prosecuting witness to show the *pendency* of a civil action for damages by the witness against the *accused*." *State v. Goar*, 311 Minn. 560, 561, 249 N.W.2d 894, 895 (1977). The theory behind this rule is that "such a suit indicates possible bias on the witness' part and is relevant to the witness' state of mind when testifying." *Id.*

In the instant case, defense counsel sought to elicit evidence of Madrid's suit for damages against La Oportunidad. The prosecutor's motion to limit such an inquiry was granted because the trial court found that the criminal prosecution was not relevant to the issues in the third-party civil suit. The trial court erred in this determination because a conviction of appellant would label appellant as a dangerous person and provide a better opportunity to prove that La Oportunidad was negligent in hiring and retaining Madrid. For this reason, the trial court committed error by not allowing appellant to cross-examine Madrid about his civil suit against La Oportunidad.

This error was harmless, however, in light of the other evidence reflecting on Madrid's credibility and in light of all the other evidence of appellant's guilt. *State v. Starkey*, 516 N.W.2d 918, 927 (Minn.1994) (harmless error test is whether there is reasonable doubt that result would have been different if evidence had not been admitted).

II.

Appellant argues that the trial court abused its discretion by improperly admitting character evidence. Generally, the prosecution may not attempt to establish the bad character of a defendant unless the defendant has put character at issue by offering evidence of good character. *State v. McCorvey*, 262 Minn. 361, 364, 114 N.W.2d 703, 705 (1962). Such evidence "is inadmissible to prove the character of a defendant in order to show that the defendant acted in conformity with that character in committing the offense with which he or she is charged." *State v. Buggs*, 581 N.W.2d 329, 336 (Minn.1998). *See also* Minn.R.Evid. 404(b).

***3** What appellant contends was improperly admitted as character evidence was evidence that appellant: (1) regularly consumed alcohol at the halfway house in violation of the rules; (2) used crack cocaine at the halfway house; (3) kept several knives at the halfway house; (4) threatened to use a knife to keep residents in line; (5) swung a stick at a resident; (6) was controlling; and (7) was paranoid. Character evidence may be admitted when the defendant "opens the door." *See State v. Gardner*, 328 N.W.2d 159, 161 (Minn.1983) (defense counsel opened door to evidence concerning defendant's character during cross-examination); *State v. Willis*, 559 N.W.2d 693, 699 (Minn.1997) (when defense counsel specifically asks whether criminal act is out of character for accused, defense counsel opens door to introduction of character evidence). When an issue is raised in defendant's opening statement the prosecution may properly respond. *State v. Blair*, 402 N.W.2d 154, 157 (Minn.App.1987) (finding admission of defendant's unemployment proper when issue was raised in defense's opening remarks).

In this case, defense counsel stated in opening remarks:

> You're going to hear testimony that's going to establish that this is not a house of angels. You're going to hear testimony that [appellant] has convictions, he has felony convictions. You're going to hear testimony that Mr. Madrid has

> felony convictions. You're going to hear testimony that other witnesses have felony convictions. You're going to hear testimony about what's referred to as control, house rules. This is a transitional housing situation. *House rule[s] focus on order, discipline, non-consumption of alcohol. You're going to hear testimony about how those house rules were walked upon and thrown out the door.* You're going to hear testimony about people involved in this melee consuming alcoholic beverages * * *. *You are going to hear testimony that [appellant] acted as the house leader. And he got into confrontation[s] with individuals about enforcing those rules, drawing a line, saying this is how you behave, this is how you conduct yourself.*

(Emphasis added.) Defense counsel also discussed the La Oportunidad rules and the confrontations appellant had with other residents regarding these rules.

Appellant, thus, brought up his own violations of the rules and his controlling personality in his opening statement. Appellant opened the door. It was not error for the court to admit prosecution evidence addressing character.

Appellant also submitted a pro se brief in this case. In his pro se brief, appellant challenges the trial court's evidentiary ruling regarding the exclusion of certain character evidence. All of these evidentiary rulings fall within the discretion of the trial court, which did not abuse its discretion. *See State v. Griller*, 583 N.W.2d 736, 742-43 (Minn.1998) (district court has great latitude in making evidentiary rulings and will not be reversed absent abuse of discretion).

III.

***4** Appellant also contends that, although he did not request jury instructions on defense of dwelling, the trial court committed plain error by failing to instruct the jury on this defense sua sponte. Decisions on jury instructions lie within the discretion of the trial court and no error results if no abuse of discretion is shown. *State v. Blasus*, 445 N.W.2d 535, 542 (Minn.1989).

By failing to object to the trial court's jury instructions, a defendant generally waives any challenge to the instructions. *See State v. Fox*, 340 N.W.2d 332, 334-35 (Minn.1983) (failing to properly object to omission of statutory element of offense in jury instruction forfeits challenge on appeal). But, even if there was no objection to the jury instructions, an appellate court can reverse if the instruction given is plain error affecting substantial rights. *Griller*, 583 N.W.2d at 740. An instruction is plain error and prejudicial "if there is a 'reasonable likelihood that the giving of the instruction in question would have had a significant effect on the verdict of the jury.' " *Id.* (quoting *State v. Glidden*, 455 N.W.2d 744, 747 (Minn.1990)).

Here, the instruction on self-defense was followed by an instruction on appellant's duty to retreat. Appellant contends the trial court erred when it included the duty-to-retreat instruction. His argument is based on *State v. Carothers*, 594 N.W.2d 897 (Minn.1999) (holding duty to retreat does not attach to defense-of-dwelling claim). But the record shows that the jury was instructed that it should acquit appellant if it believed that he reasonably and in good faith considered himself in danger from Madrid's actions. The duty to retreat was not a significant issue in this case. The prosecutor did not argue that under the facts appellant had a duty to retreat. Given the evidence, the duty-to-retreat instruction had no impact on the jury's decision. Therefore, giving the duty-to-retreat instruction was not prejudicial.

Affirmed.

All Citations

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This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).
Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,
v.
Gonzalo Gallegos-OLIVERA, Appellant.

A19-0023
|
Filed December 23, 2019

Hennepin County District Court, File No. 27-CR-18-12917

Attorneys and Law Firms

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Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Florey, Judge; and Klaphake, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge *

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

***1** In this direct appeal from final judgment, appellant Gonzalo Gallegos-Olivera argues that his conviction of making threats of violence must be reversed because the district court abused its discretion by allowing a defense witness to be cross-examined about possible immigration consequences appellant might suffer as a result of this offense. We affirm.

DECISION

The scope of cross-examination is left largely to the district court's discretion and will not be reversed absent a clear abuse of discretion. *State v. Parker*, 585 N.W.2d 398, 406 (Minn. 1998). Appellant bears the burden of establishing that the district court abused its discretion and that he was prejudiced by the evidentiary ruling. *State v. Griffin*, 834 N.W.2d 688, 693 (Minn. 2013); *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). Appellant "must prove that there is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Peltier*, 874 N.W.2d 792, 802 (Minn. 2016) (quotation omitted).

Gallegos-Olivera was arrested after a road-rage incident and charged with making threats of violence in violation of Minn. Stat. § 609.713, subd. 3(a)(1) (2016), for pointing a BB gun out the passenger window at another car. Before trial, J.R., the driver of the vehicle, submitted a sworn affidavit that he (J.R.) was the one who pointed the BB gun at the driver of the other car. He also expressed concern to officers about Gallegos-Olivera's immigration status, should he be charged with a crime. Prior to voir dire, the judge reviewed a previous off-the-record conversation regarding the admissibility of Gallegos-Olivera's immigration status. He said that Gallegos-Olivera's immigration status may be relevant to show bias or motivation if J.R. testified that he was the one who pointed the BB gun at the victim's car. The judge notified the parties that if the subject of immigration arose during cross-examination, he would give a limiting instruction. Additionally, Gallegos-Olivera's attorney informed the judge and the state that he was currently in immigration removal proceedings.

At trial, J.R. testified in conformity with his statement that he was the one who pointed the BB gun at the other vehicle. And in cross-examination the state brought up Gallegos-Olivera's immigration status to show J.R.'s potential bias or motivation for testifying.

Gallegos-Olivera argues that the evidence of potential immigration implications was not relevant because it did not go to the elements of the charged offense. Relevant evidence is evidence "having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without

the evidence." Minn. R. Evid. 401. Here, the evidence was admitted to show that J.R. had motivation to lie on the stand and went to potential bias for his testimony. "[P]artiality of a witness is subject to exploration at trial, and is always relevant as discrediting the witness and affecting the weight of his testimony." *Davis v. Alaska*, 415 U.S. 308, 316, 94 S. Ct. 1105, 1110 (1974) (quotation omitted). The fact that J.R. was concerned about his friend's immigration status goes directly to determining why he may have testified the way he did. Therefore, Gallegos-Olivera's immigration status was relevant.

***2** Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403. When balancing the probative value against the potential prejudice, unfair prejudice "is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005).

In deciding what effect the admitted evidence had on the verdict, this court considers "the manner in which the evidence was presented, whether it was highly persuasive, whether it was used in closing argument, and whether the defense effectively countered it." *Townsend v. State*, 646 N.W.2d 218, 223 (Minn. 2002).

The evidence of Gallegos-Olivera's immigration status was brought up during a brief portion of the cross-examination of J.R., a defense witness. The purpose of the evidence was to show that J.R. had a motive to fabricate his testimony. The cross-examination was short and the defense did not redirect any questions on the matter. To reduce the prejudicial effect of the testimony, the court gave a limiting instruction before it allowed the state to cross-examine J.R. regarding his belief of Gallegos-Olivera's immigration status. Gallegos-Olivera had an opportunity to give input on the jury instruction prior to the state's cross-examination, and did not object on the record to the instruction. The limiting instruction directed the jury that it could only use the evidence to assess the credibility of J.R.'s testimony. This court presumes that the jury followed the district court's limiting instruction. *State v. Pendleton*, 706 N.W.2d 500, 509 (Minn. 2005).

Immigration came up a second time during cross-examination of the detective that received J.R.'s sworn statement. The state asked the detective what J.R. said to him regarding Gallegos-Olivera's immigration status. The defense attorney did not object to this line of questioning. Finally, neither party discussed immigration in their closing argument. Therefore, the probative value of Gallegos-Olivera's immigration status is not substantially outweighed by its prejudicial effect. And, even if the evidence was erroneously admitted, it is unlikely that it had a substantial effect on the jury.

Gallegos-Olivera argues that the probative value of the evidence regarding his immigration status is substantially outweighed by its prejudicial value because evidence of a defendant's immigration status is always unfairly prejudicial and should be excluded. This court has addressed the prejudicial effect of admitting testimony regarding immigration benefits for a crime victim. *See State v. Guzman-Diaz*, No. A17-1231, 2018 WL 352055 at *2-4 (Minn. App. July 23, 2019), *review denied* (Minn. Oct. 16, 2019). Additionally, this court has addressed the prejudicial effect of courts inappropriately considering a defendant's immigration status during sentencing. *See State v. Mendoza*, 638 N.W.2d 480, 484 (Minn. App. 2002), *review denied* (Minn. April 16, 2002). However, these cases are distinguishable from the current case because they do not concern evidence that was admitted for the purpose of showing bias, prejudice, or motivation for a witness's testimony. Gallegos-Olivera also relies on a nonbinding Washington state supreme court case for the premise that immigration status is a "politically sensitive issue" that is highly prejudicial as to outweigh the probative value of the testimony. *Salas v. Hi-Tech Erectors*, 230 P.3d 583, 586-87 (Wash. 2010). None of the cited Minnesota cases support the idea that such a bright line rule exists. Nor has this court ever held that there is such a bright line rule, and we decline to adopt one here.

***3** Gallegos-Olivera also claims that the state could have used evidence of J.R.'s relationship with his sister to show potential bias, prejudice, or motivation. He argues that the state was required to use this evidence instead of his immigration status because this evidence was the least prejudicial evidence. This court has noted that there is no requirement in Minnesota that the state use the least prejudicial evidence. *State v. Rawson*, No. A18-0773, 2019 WL 2332493, *6 n.2 (discussing that Minnesota has neither adopted nor rejected the holding in *Old Chief v. United States* 519 U.S. 172, 182-85, 117 S. Ct. 644, 651-52 (1997) that the probative value of a piece of evidence is discounted if there is other, less-prejudicial evidence available to the state on the same point). Therefore, it was not necessary that the state only use J.R.'s relationship with Gallegos-Olivera's sister instead of his immigration status.

Because the evidence of Gallegos-Olivera's immigration status was relevant to show a witness's potential bias, the testimony did not substantially outweigh its prejudicial effect, and the court gave a limiting instruction, the court did not abuse its discretion in allowing this testimony.

Affirmed.

All Citations

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Court of Appeals of Minnesota.

Eric S. WALKER, Respondent,

v.

Steven D. WALKER, defendant,
Lynn M. Walker, Appellant.

A20-0675

Filed March 15, 2021

Denied May 26, 2021

Wabasha County District Court, File No. 79-CV-18-375

Attorneys and Law Firms

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Considered and decided by Larkin, Presiding Judge; Cochran, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

***1** In this civil action, a jury found that appellant entered into an oral contract to transfer 80 acres of a family farm to respondent, and the district court granted specific performance. The jury also found that appellant entered into an oral contract to compensate respondent for his work on the farm over several years, and the district court awarded monetary damages. Appellant challenges the district court's denial of her posttrial motions. She argues that the district court erred by denying her motion for judgment as a matter of law regarding the land contract because there was not clear and convincing evidence of an oral contract and because the contract was void under the statute of frauds. Appellant also argues that she is entitled to a new trial on the issue of her liability for respondent's farm services because the district court allowed inadmissible hearsay at the trial. We affirm.

FACTS

This case involves a dispute between family members over agreements concerning the family's farm. Appellant Lynn Walker and defendant Steve Walker were married during most of the relevant time frame. [1] Respondent Eric Walker is Lynn and Steve's adult son. Lynn is the sole appellant; Steve is listed on the case caption as Lynn's codefendant, but he aligned with Eric at trial and did not file an appeal.

[1] Lynn and Steve initiated divorce proceedings in July 2017, before the present action was filed, and the divorce proceedings were still pending at the time of the jury trial.

Complaint and Pretrial Motions

Eric brought a civil action against Lynn and Steve in April 2018. The action centered on his parents' farm, where Eric had worked for many years. The complaint alleged that in 2004 the parties entered into an oral contract (Contract 1) in which Lynn and Steve agreed to transfer the farm to Eric when they retired if Eric would work the farm until their retirement and make investments in the farm such as erecting additional grain bins. The complaint also alleged that, at the same time, Lynn and Steve entered into a separate oral contract with Eric (Contract 2) to pay Eric after each farming season for his labor and expenses, including the use of farm machinery that Eric owned. Eric agreed to provide his parents with a bill for his labor and expenses after each season.

According to the complaint, by fall 2013, Lynn and Steve had not paid Eric for any of his farm labor or expenses from 2004 through 2013, which totaled approximately $370,000. The complaint further alleged that the parties entered into a third oral contract (Contract 3) in 2013: Lynn and Steve agreed to transfer 80 acres of the farm to Eric so that he could build a house, and Eric agreed that this transfer would

constitute payment of Lynn and Steve's outstanding debt. Eric also promised to continue working on the farm. That fall, Lynn and Steve "portioned off" an 80-acre parcel from their 252-acre farm and Eric began building a house on the parcel. Eric continued to provide farm services for his parents. But, according to the complaint, Lynn and Steve never transferred the 80 acres to Eric and they never paid Eric for any of his farm services.

***2** Eric brought several claims against Lynn and Steve, including breach of contract. The complaint sought relief on all three contracts. It sought specific performance of Contract 3 for the 80 acres of land on which Eric had built his house and of Contract 1 for transfer of the entire farm to Eric upon his parents' retirement, as well as monetary damages for his services under Contract 2 from 2014 through 2017. In her answer, Lynn denied that the parties ever entered into any contracts. Lynn also brought several counterclaims against Eric, including civil battery and trespass to chattels.

Following discovery, Lynn moved for partial summary judgment on several of Eric's claims, including the breach-of-contract claim. She argued that there was insufficient evidence of an oral agreement to transfer any portion of the farmland. The district court granted summary judgment for Lynn in part, dismissing Eric's claims with respect to Contract 1 for transfer of the entire farm upon his parents' retirement, based on the vagueness of the alleged contract. But the district court determined that Eric had shown that the terms of Contract 2 for payment of Eric's farm services were clear and definite. The district court also determined that Eric had presented clear evidence of Contract 3 for the transfer of 80 acres of the farm. Additionally, the district court concluded that Contract 3 was removed from the statute of frauds because Eric's evidence established that the part-performance exception would apply. Consequently, the district court denied Lynn's summary-judgment motion with respect to Contracts 2 and 3.

Trial Testimony

The matter proceeded to a jury trial, which lasted nine days. Various witnesses testified to the following facts.

Eric testified about the alleged contracts. He stated that his parents bought the farm in 2003 from his grandmother and that he worked on the farm at that time while also doing side jobs. Eric testified that, in 2004, his parents agreed to transfer the entire farm to him when they retired if he stayed, worked the farm, and invested in the farm. According to Eric, his parents also agreed to pay him for his labor and expenses, including use of his machinery. The agreements were not put in writing, Eric said, because he trusted his parents.

Eric further testified that, in 2013, his parents had not yet paid him for any of his services on the farm and that, by then, they owed him about $370,000. His parents therefore agreed to transfer 80 acres of the farm to him in exchange for the $370,000 that they owed. Eric agreed to this arrangement. The oral agreement occurred "[a]t the kitchen table ... about mid[-]year," with just Eric and his parents present. Eric gave the following explanation about what he and his parents discussed:

> [M]y parents agreed to transfer me the 80 acres in lieu of $350,000 that they owed me at the time because I had not been paid for the money, my services that they owed me. They had not paid me so they agreed to transfer 80 acres of the Walker farm to me for the $370,000 that they owed me.... [T]hey had to do the 80 acres because I was engaged to get married. We were, me and my wife, were talking about moving away, and I wanted to either go buy a house somewhere or build a house on the farm.

As with the earlier agreements, Eric did not get the agreement in writing because he trusted his parents.

Eric testified that he had worked on the farm since the parties entered into their agreement for farm services in 2004 and that he gave his parents a bill after each farming season from 2004 to 2018 showing the work he had completed. Eric further testified that his father signed each bill after review with Eric and Lynn. Eric introduced evidence of these bills at trial in the form of Exhibits 3 and 4.

***3** Exhibit 3 consists of bills showing Eric's time and expenses for each farming season from 2004 to 2018. The bills for 2004 through 2013 are handwritten on notebook paper, and those after 2013 are handwritten on letterhead containing Eric's business name and contact information. Each bill also contains Steve's signature at the bottom, except for the bill concerning the 2018 season. Exhibit 4 consists of

"recreations" of the handwritten bills from 2004 to 2013, but on Eric's official business letterhead. The bills in Exhibit 4 contain the same substantive information as those in Exhibit 3. Eric testified that he recreated the 2004 to 2013 bills (in Exhibit 4) on letterhead after he purchased a computer in 2014.

At trial, plaintiff's counsel stated that the reason for admitting Exhibit 4 in addition to Exhibit 3 was to show that Eric wanted to formalize the bills for 2004 to 2013 because his parents had not transferred the 80 acres as promised to pay their outstanding debt for those years. Defense counsel objected to the exhibits, arguing, among other things, that the bills were inadmissible hearsay. The district court overruled the objections and allowed the exhibits to be admitted.

Steve testified at trial to the family dealings, providing a similar version of the events as Eric. He discussed Contracts 1 and 2, saying that he and Lynn told Eric that they "would give him the farm at our retirement" if he would work the farm and make investments in the farm instead of pursuing other opportunities. Steve testified that he and Lynn also agreed to compensate Eric for his time, labor, and expenses while working on the farm. The parties agreed that Eric would present invoices to Steve and Lynn on an annual basis, and that they intended to pay him each year. Steve further testified that Eric presented the bills as agreed upon and that Steve signed each one after "sit[ting] down" with Eric to discuss the work performed. Steve also testified that Lynn was present at the meetings where Eric and Steve reviewed the bills and that she never voiced any objection to the time and amounts requested.

Steve further testified about Contract 3 for the 80-acre parcel. He initially said that the parties discussed the matter in 2014, but then acknowledged that it must have happened earlier, before construction of the house began. He recalled that "[he] and Eric and Lynn sat down, and [they] had a conversation about splitting an 80 acres off." During the conversation, Eric mentioned that Steve and Lynn had not paid his bills for his work on the farm, so Steve and Lynn agreed to transfer some of the farmland to Eric. Steve said that he heard Lynn verbally agree to that arrangement. Steve testified that the value of the 80 acres was approximately equal to the amount that he and Lynn owed Eric for his services. Steve also explained that the 80-acre parcel size was necessary in order for Eric to build a house because the township required a parcel of at least 80 acres to build a new house. And Steve clarified that if he and Lynn had wanted to build another house on their existing parcel, they would *not* have had to parcel off the property because, according to the township rules, their existing parcel was large enough to accommodate two homes.

In November 2013, Steve and Lynn split off 80 acres from the farm. Both Steve and Lynn signed the quitclaim deed. Rather than convey the property to Eric, though, Steve and Lynn deeded the property to themselves. Steve explained that his reason for doing this was that they "needed to look through and find out ... what the burden of the taxes and the legal aspects of turning it over to Eric [were] for money reasons [because] there could be burdens there."

***4** Construction of a house on the 80-acre parcel began near the end of 2013. Steve and Eric both testified that it was understood that the house was being built for Eric and his wife. Eric said that he and his wife funded the construction of the house and that they put about $400,000 into the house. Eric acted as his own general contractor, did much of the work himself, and hired people to help him with various parts of the construction. Eric testified that Lynn never objected to him building the house and that she never told him to get off the property when he was building it. The house was completed in May 2015, and Eric moved in with his wife.

Lynn disputed Eric's and Steve's testimony, providing a different version of events. She denied that she and Steve ever orally agreed to transfer the farm or the 80 acres to Eric in exchange for him working on the farm. She also disputed the figures on Eric's invoices and said that she had never seen any documentation of his hours. Lynn testified that, as of 2014, she "felt that [Eric] was getting paid" and "didn't feel we owed him anything." Lynn acknowledged that she had agreed to split off the 80 acres of land in fall 2013 and that she was aware that a house was being built on the property. But she said that she had believed that the house was being built for her and that she agreed to the land transfer "under the assumption [she] was going to get the new house."

After Eric moved into the house with his wife, title to the 80-acre parcel remained with Lynn and Steve. Eric testified that he talked with his parents on several occasions about transferring the property to him and that he "assumed that it was going to happen." By 2017, though, Lynn claimed that the house belonged to her. According to Eric, Steve wanted to transfer the 80-acre parcel to him, but Lynn had refused. At the time of the trial, Eric lived in the house with his wife and three children.

Verdict and Posttrial Motions

The jury returned a special verdict, finding in favor of Eric on several of his claims. It found that there was clear and convincing evidence that the parties entered into an oral contract to transfer 80 acres in exchange for the outstanding debt due to Eric at the time, and that Lynn breached the contract. The jury also found that there was an oral contract for Lynn and Steve to compensate Eric for his farm services and expenses, and that Lynn and Steve breached that contract for the period from 2014 through the time of trial—the period postdating the 80-acre land contract. The jury further found that Steve and Lynn were unjustly enriched in that Eric conferred a benefit on them and that it would be unfair for them to retain that benefit. Additionally, the jury found in favor of Lynn on two of her counterclaims, civil battery and trespass to chattels. The district court incorporated the jury verdict into its findings of fact, conclusions of law, and order for judgment. The district court granted Eric title to the 80 acres and awarded him $537,535.77 in damages. It also awarded $9,000 to Lynn on her counterclaims.

Lynn filed posttrial motions for judgment as a matter of law, to amend the court's findings of fact and conclusions of law, or for a new trial. She argued that she was entitled to judgment as a matter of law because, among other reasons, the alleged oral contract for the 80 acres of land did not satisfy the statute of frauds and the evidence did not establish that an enforceable contract was ever formed. Lynn argued alternatively that she was entitled to a new trial because, among other reasons, the district court erred at trial by admitting Eric's exhibits showing his bills for his farm services, which Lynn asserted were inadmissible hearsay.

***5** The district court denied Lynn's posttrial motions. It determined that the jury had a "legally sufficient basis" to reach its verdict and therefore Lynn was not entitled to judgment as a matter of law. Regarding Lynn's new-trial argument, the district court determined that it had properly admitted the exhibits containing Eric's bills, reasoning that Exhibit 3 was admissible as a prior consistent statement or a business record, and that Exhibit 4 was nonhearsay. Alternatively, the district court concluded that it could have properly admitted the exhibits under the residual-hearsay exception.

Lynn appeals.

DECISION

Lynn challenges the district court's denial of her posttrial motions. Specifically, she argues that the district court erred by denying her motion for judgment as a matter of law on Eric's claim regarding the 80 acres. She also argues that she is entitled to a new trial on the issue of her liability for Eric's farm services because the district court abused its discretion when it admitted evidence of Eric's bills, which served as the basis for the damages awarded to Eric. Neither argument is persuasive.

I. The district court properly denied Lynn's motion for judgment as a matter of law.

Lynn argues that she is entitled to judgment as a matter of law (JMOL) on Eric's claim for specific performance of Contract 3—the contract to convey the 80-acre parcel to Eric. We review the district court's decision on a motion for JMOL de novo. *Pouliot v. Fitzsimmons*, 582 N.W.2d 221, 224 (Minn. 1998). A party is entitled to JMOL on an issue only when "there is no legally sufficient evidentiary basis for a reasonable jury to find" for the opposing party on that issue. Minn. R. Civ. P. 50.01(a). We take into account all the evidence, "including that favoring the verdict," view the evidence "in the light most favorable to the verdict," and "may not weigh the evidence or judge the credibility of the witnesses." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 55 (Minn. 2019) (quotation omitted). We will not set aside the jury's verdict "if it can be sustained on any reasonable theory of the evidence." *Pouliot*, 582 N.W.2d at 224.

Lynn argues that she is entitled to JMOL for two reasons: (1) there was not clear and convincing evidence that the parties entered into an oral contract to convey the 80 acres of farmland, and (2) even if there were an oral contract, the contract is void under the statute of frauds, and the part-performance exception does not apply to remove the contract from the statute of frauds. We examine each argument in turn.

A. There was clear and convincing evidence of an oral contract for the 80-acre parcel.

Lynn maintains that Eric did not present clear and convincing evidence that there was an oral contract for the 80 acres of farmland. Eric argues that his testimony along with Steve's testimony clearly and convincingly showed that there was an oral contract.[2] We agree with Eric that the jury could

find clear and convincing evidence of a contract based on the evidence presented.

2 Although Eric and Steve also testified that the parties entered into Contract 1 in 2004 to transfer the entire farm to Eric, this issue was not put before the jury because the district court granted summary judgment for Lynn before trial on Contract 1. The only alleged contract at issue here is Contract 3 for the 80 acres.

A party seeking to establish an oral contract for the sale of land must prove the existence of the contract by clear and convincing evidence. *Christie v. Estate of Christie*, 911 N.W.2d 833, 840 (Minn. 2018). The clear-and-convincing standard is higher than a preponderance of the evidence and is satisfied when "the truth of the facts asserted is 'highly probable.' " *Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978). To satisfy the clear-and-convincing standard, the facts must be "consistent and not contradictory, clear and not equivocal, convincing and not doubtful." *Christie*, 911 N.W.2d at 840 (quoting *Theisen's, Inc. v. Red Owl Stores, Inc.*, 243 N.W.2d 145, 148-49 (Minn. 1976)). The reason that oral contracts for land sales must be proved by clear and convincing evidence is due to the concern that "a fraudulent claim regarding the contract could be enforced if the standard of proof is not high enough to ensure certainty." *Id.*

***6** To prove the formation of a contract, three elements must be met: offer, acceptance, and consideration. *Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). Consideration is something that is bargained for and given in return for a performance or promise of performance. *Deli v. Hasselmo*, 542 N.W.2d 649, 656 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996). Whether a contract was formed is based on the parties' objective conduct rather than their subjective intent. *Thomas B. Olson & Assocs., P.A. v. Leffert, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009).

Here, the evidence Eric presented was sufficient for the jury to find all three elements of a contract. Eric and Steve both testified that they and Lynn had a conversation in 2013 about transferring 80 acres of farmland to Eric. According to their testimony, the offer and acceptance occurred during that conversation. And there was clear evidence for the jury to find consideration: Steve and Lynn promised to convey 80 acres of farmland to Eric in exchange for Eric's waiver of the debt that they owed Eric for his work on the farm from 2004 through 2013. Lynn and Steve's acceptance of the offer is further supported by their act of signing the quitclaim deed in November 2013 that split off 80 acres from their 252-acre farm. This evidence is sufficient to uphold the jury's finding that all the necessary elements of a contract were met.

Lynn, however, argues that the evidence is not clear and convincing for several reasons. First, she maintains that the timing of Eric's offer was unclear, noting that Eric and Steve presented inconsistent testimony about when the alleged contract occurred. We observe that Eric and Steve's testimony was somewhat vague regarding exactly when in 2013 the conversation took place. Eric testified that the conversation happened "about mid[-]year" in 2013. Steve initially testified that it occurred in 2014, and then stated that it must have happened before construction on the house began in fall 2013. Given that the trial was held in 2019, several years after the discussion, we do not believe that the parties' inability to recall exactly when the discussion occurred means that the jury could not find by clear and convincing evidence that there was a contract. Moreover, the evidence presented allowed the jury to find that Steve and Lynn split off 80 acres from the farm in fall 2013 and that Eric began construction of the house on the parcel around that time. These events are consistent with the testimony that the parties agreed to transfer the 80 acres. Regardless of what the parties were able to recall about the exact details of the conversation, the evidence of their *actions* in late 2013 allowed the jury to conclude that the parties understood that a contract had been formed.

Next, Lynn argues that the evidence did not clearly show that she accepted the offer, pointing to the fact that she never finalized the transfer of the 80 acres to Eric. Steve, however, testified that Lynn did agree to the transfer. His testimony is supported by the fact that Lynn signed the quitclaim deed splitting off the 80 acres from their farmland. The signing of the deed is strong evidence that Lynn understood that the 80 acres were to be transferred. Lynn insists that, if she and Steve had intended to transfer the land to Eric, they would have deeded it directly to him, rather than to themselves. But Steve offered an explanation for why they transferred the property to themselves, saying that they were concerned about the tax consequences. Steve also testified that the township required 80 acres in order to build a new house on a separate parcel. Based on the evidence, the jury could find that Lynn did not object to Eric building the house on the property, nor did she tell him to get off the property while he was building the house. Although Lynn testified that she believed the house was meant to be for her, the jury was not obligated

to accept her testimony in light of contrary evidence. Under the township rules, it would not have been necessary for Lynn and Steve to transfer the land if the house was meant for Lynn because the parcel that they owned was large enough to build another house. We must view the evidence in the light most favorable to the verdict, *Kedrowski*, 933 N.W.2d at 55, and that evidence could allow the jury to find it highly probable that Lynn accepted the offer.

*7 Finally, Lynn insists that Eric did not present clear evidence of consideration, arguing that the evidence did not show that the 80-acre parcel was in exchange for the debt Steve and Lynn owed Eric for his farm services from 2004 to 2013. We disagree. In addition to Eric and Steve's testimony that the 80 acres served as consideration for the debt, Eric introduced Exhibits 3 and 4. These exhibits include bills for Eric's annual labor and expenses on the farm.[3] Exhibit 3 includes handwritten bills for 2004 through 2013.[4] Each bill was dated and signed by Steve. Exhibit 4 includes similar bills, with the only significant difference being that the bills are printed on paper with Eric's business letterhead. In 2014, after he bought a computer, Eric "recreated" the bills included in Exhibit 4 so that they appeared more business-like than the original handwritten bills included in Exhibit 3. Steve's act of signing Eric's bills, as well as Eric's act of formalizing them after purchasing a computer, supports the jury's finding that the parties treated the bills as debts that Lynn and Steve needed to pay. There was ample evidence of consideration to support the jury's finding of an oral contract.

3 We address Lynn's argument that Exhibits 3 and 4 were inadmissible hearsay in greater detail below.

4 Exhibit 3 also includes bills from later years but those years are not relevant to this issue.

In concluding that there was clear and convincing evidence presented at trial to allow the jury to find an oral contract, we are mindful of our role on appeal from a denial of a motion for JMOL. The parties presented competing theories to the jury, and the jury chose to accept Eric's version over Lynn's. We must view the evidence in the light most favorable to the jury's verdict, without reweighing the testimony or judging the credibility of witnesses. *Id.* Applying this standard, we conclude that there was clear and convincing evidence of an oral contract and that the jury could find that the parties formed an oral contract to transfer the 80-acre parcel. As such, Lynn is not entitled to JMOL on this basis.

B. The part-performance doctrine removes the oral contract from the statute of frauds.

Lynn argues that, even if an oral contract existed, she is still entitled to JMOL because the contract was void under the statute of frauds and no exception to the statute of frauds applies. Eric maintains that the oral contract is removed from the statute of frauds under the doctrine of part performance. We agree with Eric that the part-performance exception removes the contract from the statute of frauds.[5]

5 We note that the jury instructions did not ask for the jury to make a finding on part performance. Lynn argues in her principal brief that, because neither the district court nor the jury made a finding on part performance, the district court erred by failing to apply the statute of frauds. But Lynn never asked for a jury instruction on the statute of frauds or part performance. We are satisfied that the district court implicitly made a finding of part performance, and Lynn concedes this point in her reply brief. *See* Minn. R. Civ. P. 49.01(a) (providing that, if an issue is omitted from the special-verdict form, the district court may make a finding, or it is deemed to have made a finding consistent with the judgment on the special verdict).

Under the Minnesota statute of frauds, a contract for the sale of land is void unless it "is in writing and subscribed by the party by whom the ... sale is to be made." Minn. Stat. § 513.05 (2020). One exception to the statute of frauds is part performance, which allows a court of equity to compel specific performance of a contract that is otherwise void. Minn. Stat. § 513.06 (2020). For the doctrine to apply, a party to a contract must engage in acts of part performance "in reliance upon and in pursuance of an existing contract." *Ruble v. Ruble*, 47 N.W.2d 420, 422 (Minn. 1951). Under one formulation of the part-performance doctrine, specific performance of the contract will be required "where [the] plaintiff shows that his acts of part performance in reliance upon the contract have so altered his position that he will incur unjust and irreparable injury in the event that [the] defendant is permitted to rely on the statute of frauds." *Burke v. Fine*, 51 N.W.2d 818, 820 (Minn. 1952). The supreme court has recognized that part performance applies to a land-sale contract when a buyer has taken possession of the land and made significant improvements on it. *Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 900 (Minn. 1982); *see also Kociemba v. Kociemba*, 177 N.W. 927, 928 (Minn. 1920) (holding that part performance of an oral contract for land was

sufficient when a son who had allegedly bought the land from his parents took possession of the land, made improvements, and paid taxes on it).

*8 Here, Eric took possession of the 80-acre parcel and made substantial improvements by building a house on the property. Eric and his wife paid for construction of the house. He personally engaged in extensive projects for the house: digging a water line to the house, pouring cement footings, putting rock down, and putting up the walls. When the house was completed, Eric moved in with his wife, and he currently resides there with his family. Eric's actions fall within the type of situation for which courts have applied the part-performance doctrine. His actions strongly suggest that he was acting in reliance on the oral contract and that he would be unjustly and irreparably harmed if the statute of frauds were enforced and he were not given title to the property.

For this reason, we conclude that the part-performance doctrine removes the oral contract from the statute of frauds. Lynn is not entitled to JMOL based on her statute-of-frauds argument.

II. The district court properly denied Lynn's motion for a new trial.

Lynn also argues that she is entitled to a new trial on the issue of her liability for Eric's farm services. She maintains that Exhibits 3 and 4, which include bills for Eric's farm services, constitute inadmissible hearsay and that the district court erred by admitting the exhibits. We conclude that the district court did not abuse its discretion by admitting the exhibits.

A district court may grant a new trial if, among other reasons, "errors of law" occurred at the trial and the complaining party objected to the alleged error. Minn. R. Civ. P. 59.01(f). The admission of evidence lies within the discretion of the district court, and we will not reverse unless there was an erroneous view of the law or an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997).

Hearsay is an out-of-court statement "offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay is inadmissible unless an exception applies. Minn. R. Evid. 802. The district court determined that Exhibit 3 was admissible either as a nonhearsay prior consistent statement or under the business-records exception, and that Exhibit 4 was nonhearsay because it was not admitted for its truth. The district court also concluded that both exhibits could have been admitted under the residual-hearsay exception. We conclude that Exhibit 3 was properly admitted as a business record and that Exhibit 4 was properly admitted as nonhearsay. Consequently, we do not address the other hearsay grounds decided by the district court.

A. Exhibit 3 was properly admitted under the business-records exception.

The district court admitted Exhibit 3 under the business-records exception. Exhibit 3 consisted of informal, handwritten documents showing Eric's time and expenses for the farm services that he provided each year from 2004 to 2018. We agree with the district court that the exhibit falls within the business-records exception.

The business-records exception to the hearsay rule is contained in Minnesota Rule of Evidence 803(6):

> A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit. A memorandum, report, record, or data compilation prepared for litigation is not admissible under this exception.

*9 The rule essentially encompasses four requirements: (1) the document was made by a person with personal knowledge

and with "a business duty to report accurately"; (2) it was made "at or near the time of the recorded event"; (3) it was "kept in the course of a regularly conducted business activity"; and (4) it was made as part of a regular practice of that business activity. *In re Child of Simon*, 662 N.W.2d 155, 160 (Minn. App. 2003). Even when all these requirements are met, a document will not be admissible if it lacks trustworthiness. *Id.*

We conclude that all the requirements for the business-records exception are satisfied here. Although Eric's billing practice was relatively informal, we note that rule 803(6) applies broadly to records "in any form" and to businesses "of every kind." Eric testified that he documented his work because his parents had agreed to pay him for his labor on the farm and his use of the machinery. He explained that he wrote up a bill after each farming season, that he discussed the labor and expenses included in each bill with his parents, and that Steve signed the bills after reviewing them. Eric had personal knowledge of the information included in the bills because he was the one who performed the work and wrote up the bills. His testimony shows that the bills were kept in the course of his regularly conducted business activity, and that writing up the bills was a regular, annual business practice. Although Eric did not specifically testify that he had a "business duty" to report his expenses accurately, the district court likened Eric to an independent contractor, with a duty to report the amount of work he completed and to charge accordingly. The record supports this characterization. Eric's explanation of writing up his charges after each farming season and presenting them to his parents for signature implies that he had a clear business duty to report his expenses accurately. And the bills were prepared near the time of the recorded event because the bills were an annual summary of Eric's labor and expenses for each farming season.

We are not persuaded otherwise by Lynn's contention, at oral argument, that the exhibits constituted "double hearsay" because Eric testified that he compiled the bills from other, undisclosed sources on which he had written more specific charges. This court has recognized that "[b]ills and summary listings may be acceptable evidence [under the business-records exception] even without the inclusion of underlying support." *Theissen-Nonnemacher, Inc. v. Dutt*, 393 N.W.2d 397, 400 (Minn. App. 1986) (holding that a contractor's monthly bills for labor and materials were properly admitted under the business-records exception). We observe that many business records necessarily include information that the person preparing the record may have obtained from multiple sources. Here, Eric's testimony shows that these other sources that he relied on when preparing his annual bills were also kept as part of the same regular business practice. The fact that Eric's bills were a compilation of multiple sources does not render them inadmissible.

Finally, we address Lynn's argument that the district court should not have admitted Exhibit 3 because it lacked trustworthiness. Lynn insists that the method and circumstances of Exhibit 3's preparation demonstrate that Exhibit 3 is not trustworthy. To support this argument, she points to Exhibit 4, which includes the same information as Exhibit 3. Lynn argues that the information included in both exhibits was likely "falsified" because Exhibit 4 was recreated from Exhibit 3 and backdated. But the record does not support the contention that Exhibit 4 was necessarily created for an improper purpose. Exhibit 4 is not a "false replica" of Exhibit 3 as claimed by Lynn; both exhibits contain the same substantive information, with the only difference being as to form—one entirely handwritten (Exhibit 3) and the other on Eric's letterhead (Exhibit 4). Eric explained that he created the bills included in Exhibit 4 to retain a more official-looking version of the bills, and that he did so only after he purchased a computer. These circumstances do not suggest that the original documents included in Exhibit 3 lack trustworthiness or are not reliable. Moreover, Lynn had an extensive opportunity at the trial to cross-examine Eric and Steve about the creation of Exhibits 3 and 4, and to argue to the jury that the bills were not genuine. The district court and the jury both were able to consider Eric's bills in light of the competing evidence presented, and they rejected Lynn's argument that the bills were created improperly. Given the evidence before us, we cannot say as a matter of law that the bills lack trustworthiness such that they should not have been admitted and considered by the jury.

***10** For these reasons, we conclude that the district court did not abuse its discretion by admitting Exhibit 3 under the business-records exception.

B. Exhibit 4 was properly admitted as nonhearsay.

The district court admitted Exhibit 4, determining that it was nonhearsay because it was not offered for its truth. Exhibit 4 shows the same information as Exhibit 3 for the years 2004 to 2013, but the bills in Exhibit 4 are on paper with Eric's business letterhead. As noted above, Eric testified that the bills included in Exhibit 4 are "recreations" of bills included in Exhibit 3 and that he created the Exhibit 4 bills after purchasing a computer in 2014. The district court

reasoned that Exhibit 4 was not offered for its truth and was instead "offered to establish that [Eric] wanted some sort of formalization of documents." We agree.

A statement is hearsay only if it is offered "to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Here, the truth of the matter asserted in Exhibit 4 is that the descriptions of Eric's farm services and the dollar figures contained in Eric's bills are accurate representations of his time and labor. When seeking to admit the exhibit, however, plaintiff's attorney told the district court that he was offering the exhibit to show that Eric "tried to formalize his invoices that he already had" because he "had concerns in 2014 with respect to his parents transferring the 80 acres to him." The record supports that this was indeed the purpose of admitting the exhibit. The bills included in Exhibit 4 list the same charges as those shown on the bills included in Exhibit 3 and differ only in the form in which the information is presented. As such, Exhibit 4 would have been needlessly duplicative if it had been admitted for its truth. Because Exhibit 4 was not admitted for its truth, the district court properly admitted it as nonhearsay.

Conclusion

In sum, Lynn is not entitled to JMOL because, viewing the evidence in the light most favorable to the verdict, there was clear and convincing evidence of an oral contract for the 80-acre parcel, and that contract was removed from the statute of frauds under the part-performance exception. Likewise, Lynn is not entitled to a new trial because the district court properly admitted the exhibits showing Eric's annual farm-services bills. The district court did not err in denying Lynn's posttrial motions.

Affirmed.

All Citations

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Court of Appeals of Minnesota.

Sandra E. MARTINEZ, petitioner, Respondent,
Julio Cesar Solis, petitioner, Respondent,
v.
Patrick TAKUANYI, Appellant.

No. A09-155.
|
Dec. 1, 2009.
|
Review Denied Feb. 16, 2010.

West KeySummary

1 **Criminal Law** ⇐ Public or Official Acts, Proceedings, Records, and Certificates

110 Criminal Law
110XVII Evidence
110XVII(P) Documentary Evidence
110k429 Public or Official Acts, Proceedings, Records, and Certificates
110k429(1) In general

A defendant against whom a harassment restraining order was issued was not entitled to admit as evidence a police report. The defendant alleged that the police report demonstrated that one of his accusers made a threat to kill him, but the defendant was unable to authenticate the report and it was thus inadmissible hearsay. Further, the content of the report was essentially the same as what the defendant and the accuser testified to at the hearing, and because of this it would not likely influence the outcome of the hearing. 50 M.S.A., Rules of Evid., Rules 801(a, c), 901(b)(7); Minn. R. Evid. 805.

Ramsey County District Court, File Nos. 62-HR-CV-08-661, 62-HR-CV-08-666.

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Considered and decided by LANSING, Presiding Judge; STONEBURNER, Judge; and JOHNSON, Judge.

UNPUBLISHED OPINION

LANSING, Judge.

*1 Following an evidentiary hearing, the district court issued a harassment restraining order prohibiting Patrick Takuanyi from coming within a one-block radius of Sandra Martinez and Julio Solis's residence or place of business. In this appeal, Takuanyi challenges the exclusion of a police report from evidence, the sufficiency of the evidence to support the restraining order, and the scope of the order's restrictions. Because we conclude that the district court did not abuse its discretion by excluding the report, the evidence supports the order, and the order is not overly restrictive, we affirm.

FACTS

The harassment restraining order at issue in this appeal grew out of a business relationship between Patrick Takuanyi and Sandra Martinez and Julio Solis. Martinez opened a car sales and repair business and entered into a joint contract with a business partner to purchase the property on which the business is located. The business partner executed a document transferring his joint interest in the business and the property to Takuanyi. Solis managed the day-to-day operations of the business, but, in January 2008, Takuanyi began spending time at the shop. Martinez and Solis testified that in the spring of 2008, Takuanyi began to threaten them at the shop when they had disagreements over business issues. Martinez and Solis filed a petition for a harassment restraining order in October 2008.

The district court held a hearing on the petition. Martinez, Solis, Takuanyi, and a witness for Martinez and Solis testified.

Martinez, Solis, and their witness, a client of the business, testified to Takuanyi's persistent threats and acts of violence and aggression. These acts included bringing his face close to Martinez's face and yelling at her that he wanted to hit her and threatening to hit her; threatening to have Solis arrested and removed from the country; intentionally damaging a car on the property in anger; repeatedly approaching Martinez and Solis, yelling at them, and then calling the police to intervene.

Based on the testimony, the district court found reasonable grounds to believe that Takuanyi had harassed Martinez and Solis and issued a harassment-restraining order. Takuanyi appeals the district court's order.

DECISION

The three grounds raised in the appeal are, first, that the district court erred in its evidentiary ruling that excluded a police report; second, that the evidence is insufficient to support the harassment restraining order; and, third, that the scope of the order, which prohibits Takuanyi from being at the shop of the business that he believes he owns jointly with Martinez, is overly restrictive.

I

During the evidentiary hearing, Takuanyi offered into evidence a police report that related to one of the incidents cited in Martinez and Solis's petition. The district court ruled that the report was inadmissible hearsay. The record indicates that Takuanyi sought to admit the police report to prove his statement to the police that Solis had threatened to kill him.

***2** We review evidentiary rulings under an abuse-of-discretion standard. *State v. Vance*, 254 N.W.2d 353, 358 (Minn.1977). To establish reversible error, the appellant must demonstrate not only that the district court abused its discretion, but also that it resulted in prejudice. *State v. Amos*, 658 N.W.2d 201, 203 (Minn.2003). Hearsay is an out-of-court statement offered for the truth of the matter asserted. Minn. R. Evid. 801(a), (c). Unless the hearsay comes within an exception to the general rule of inadmissibility, it must be excluded. Minn. R. Evid. 802. Takuanyi argues that the police report was admissible under the public-records exception. *See* Minn. R. Evid. 803(8).

The district court did not abuse its discretion in excluding the report as inadmissible hearsay. Takuanyi was unable to authenticate the report, which is a prerequisite to the admission of a public record. *See* Minn. R. Evid. 901(b)(7) (discussing authentication of public records). In addition, Takuanyi's statement in the police report constitutes hearsay within hearsay, requiring an additional exception. *See* Minn. R. Evid. 805 (discussing conditions for admitting hearsay within hearsay). Finally, Takuanyi was not prejudiced. The content of the police report essentially restated the testimony of Takuanyi and Solis at the hearing. Consequently, the admission of the police report did not likely influence the outcome of the hearing. *See State v. Ferguson*, 729 N.W.2d 604, 615 (Minn.App.2007) (stating standard for prejudice), *review denied* (Minn. June 19, 2007).

II

We review the issuance of a harassment restraining order for abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn.App.2000). The district court may grant a restraining order if "the court finds at the hearing that there are reasonable grounds to believe that [a person] has engaged in harassment." Minn.Stat. § 609.748, subd. 5(a)(3) (2008). "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...." *Id.*, subd. 1(a)(1) (2008). A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn.App.2004) (citing Minn. R. Civ. P. 52.01), *review denied* (Minn. Sept. 29, 2004).

Takuanyi argues that the record does not show that he intended to harass Solis and Martinez and that Solis and Martinez were not credible. Minnesota law does not require proof of intent to harass for a court to issue a harassment restraining order. Minn.Stat. § 609.748, subd. 1(a)(1). Conduct that is objectively unreasonable, even if not intended to harass, combined with an objectively reasonable belief by a petitioner that the conduct adversely affects his or her security, safety, or privacy is sufficient under the statute. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn.App.2006). The district court questioned Martinez and Solis about the incidents alleged in their petition and asked Takuanyi to respond to the allegations. Martinez and

Solis also presented witness testimony that corroborated their version of Takuanyi's conduct. The testimony from both sides presented a question of credibility that the district court resolved in favor of Martinez and Solis. We defer to the district court's credibility assessment. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn.1988). Based on the record, the district court did not abuse its discretion in concluding that there were reasonable grounds to believe that Takuanyi had harassed Martinez and Solis.

III

***3** Finally, Takuanyi challenges the scope of the restraining order, arguing that preventing him from going to the shop is improper in light of his ownership interest in the business. Takuanyi presented this argument to the district court at the hearing and again in a motion for reconsideration. The district court noted that ownership was disputed by the parties and stated that the documents presented by Takuanyi did not prove his interests or rights in the business or the property. Furthermore, an individual can legally be restrained from property, despite an ownership interest. *See* Minn.Stat. § 518B.01, subd. 6(a)(2) (2008) (stating that order for protection can exclude abusing party from shared dwelling); *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn.App.1995) (stating Minnesota's harassment-restraining-order statute and order-for-protection statute "are sufficiently similar so that we may recognize caselaw construing the former as applicable to the latter"). Thus, conclusive proof of Takuanyi's rights in the business would not preclude the court from issuing an order restricting Takuanyi from his place of business.

We recognize that if Takuanyi had proved his ownership, the district court may have been able to make a more specific ruling that weighed the competing rights and would avoid restraining Takuanyi more severely than necessary, while adequately protecting Martinez and Solis. But in light of the evidence in the record, the district court did not abuse its discretion in restraining Takuanyi from the location where he had repeatedly harassed Martinez and Solis.

Affirmed.

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