

STATE OF MINNESOTA  
IN COURT OF APPEALS

A24-0100



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In the Matter of

Brooke Lea Simpson,

Appellant,

vs.

Medarid Duque,

Respondent.

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**ORDER OPINION**

Ramsey County District Court  
File No. 62-HR-CV-23-803

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and Ede, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:**

1. Brooke Simpson petitioned the district court in July 2023 for a harassment restraining order (HRO) against Medarid Duque because Duque allegedly harassed her and her family by recording, staring at, and shining bright car lights at them, by menacing them with erratic driving, and by directing his kids to disturb them by yelling.

2. A district court referee held an evidentiary hearing on the petition, allowing Simpson and Duque thirty minutes each for testimony, cross-examination, and closing statements. The referee also questioned Duque directly. Duque required the services of language interpreters who occasionally interrupted the proceeding.

3. The referee denied Simpson's HRO petition, finding both parties equally credible but concluding that Simpson failed to meet her burden of proof. The referee

acknowledged that Simpson was bothered by Duque's conduct but also believed Duque's explanations that he wasn't trying to bother Simpson. A district court judge confirmed the order denying Simpson's petition, and Simpson appeals.

4. We review a district court's decision whether to grant an HRO for an abuse of discretion. *Borth v. Borth*, 970 N.W.2d 699, 701 (Minn. App. 2022).

5. We infer that the district court denied Simpson's HRO petition because it found that Simpson had the requisite objectively reasonable belief she was being harassed, but that Duque's conduct or intent was not objectively unreasonable. *See* Minn. Stat. § 609.748, subd. 1 (2024) (defining harassment as "repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another"); *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006) (observing that harassment "requires both objectively unreasonable conduct or intent on the part of the harasser and an objectively reasonable belief on the part of the person subject to harassing conduct"), *rev. denied* (Minn. Mar. 28, 2006).

6. For every instance of harassment that Simpson alleged, Duque gave an innocuous explanation or provided a general denial that the district court determined to be reasonable. Our review of the allegations and responses leads us to conclude that this determination is well supported and does not reflect an abuse of discretion.

7. The district court also did not clearly err by finding Duque credible. We defer to the district court on matters of witness credibility, *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009), and we are satisfied that the referee had a sufficient basis to

disregard the only objective reason to find that Duque's testimony may not have been credible—that he testified that he did not see Simpson when he pulled out his car in front of her but later acknowledged that he stopped his car when he heard Simpson honk her horn. As both statements can be true, we will not second-guess the credibility determination.

8. On appeal, Simpson alleges additional instances of Duque's harassment that we will not address because they are outside the appellate record. *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff'd*, 504 N.W.2d 758 (Minn. 1993).


9. Simpson also argues on appeal that she was prejudiced because she was allowed only 30 minutes to testify and was interrupted by the interpreter. And she argues that the referee inaccurately summarized some of her testimony as the referee directed Duque's attention to a lengthy video exhibit. But we do not generally consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Simpson did not preserve these arguments by making them in the district court, and she therefore forfeited them on appeal.

**IT IS HEREBY ORDERED:**

1. The district court's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, *res judicata*, or collateral estoppel.

Dated: January 10, 2025

**BY THE COURT**

  
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Judge Kevin G. Ross