

*This opinion is nonprecedential except as provided by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
A21-0887**

In re the Marriage of: Abdiaziz Mohamud Elmi, petitioner,
Respondent,

vs.

Rukia Abdullahi Hashi,
Appellant.

**Filed May 31, 2022
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-FA-19-1590

Bradley John Haddy, Minnesota Esquire, LLC, Edina, Minnesota (for respondent)

Ryan J. Briese, Kristine J. Zajac, Zajac Law Firm, Minneapolis, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Abdiaziz Mohamud Elmi and Rukia Abdullahi Hashi were married for five years before their marriage was dissolved. The district court awarded the parties joint legal and joint physical custody of their one joint child, ordered a parenting-time schedule, and required Elmi to pay child support to Hashi. On appeal, Hashi raises four issues. We

conclude that the district court did not err with respect to any of the four issues. Therefore, we affirm.

FACTS

Elmi and Hashi were married in 2015. They have one joint child, M.A.E., who was born in February 2018. Elmi and Hashi separated in October 2018, when Elmi moved out of the family home.

In March 2019, Elmi petitioned the district court for dissolution of the marriage by filing a handwritten *pro se* petition. He requested joint legal and joint physical custody of M.A.E. Hashi responded, with the assistance of counsel, by requesting sole legal and sole physical custody of M.A.E. The case was tried to a referee on two days in June and July of 2020 using a web-based video-conferencing application. Both parties were represented by counsel at trial. The parties' evidence was focused on the issues of custody and parenting time.

The district court filed its judgment and decree in November 2020. The district court found that Elmi was a capable and loving parent and that Hashi had denied him parenting time. The district court also found that Hashi had “demonstrated a pervasive unwillingness to support” M.A.E.’s relationship with his father and had “not display[ed] a willingness to co-parent.” The district court ordered joint physical and joint legal custody and ordered that Elmi shall have parenting time between Wednesday and Thursday on a weekly basis and between Friday and Sunday on alternating weekends. The district court found that Elmi has a gross monthly income of \$2,007 and that Hashi has a gross monthly income of \$3,113. Based on the statutory child-support formula, the district court ordered

Elmi to pay Hashi \$723 per month in child support. Hashi filed a motion for a new trial, which the district court denied in May 2021. Hashi appeals.

DECISION

I. *Ex Parte* Communication

Hashi first argues that the district court erred by denying her motion for a new trial.

Hashi's new-trial motion was based primarily on Elmi's attorneys' post-trial submission of evidentiary materials to the district court on an *ex parte* basis. Approximately one month after the trial had concluded, while the matter was under advisement, Elmi's attorneys sent an e-mail message to the referee's law clerk with a proposed judgment and decree, as requested by the referee at the conclusion of trial. Elmi's attorneys also submitted a two-page document entitled "Epilogue," which was signed by Elmi's attorneys. The epilogue document describes several incidents between the parties that allegedly occurred in August 2020, after the trial, and asked the district court to award Elmi sole legal custody. The referee's law clerk responded by sending an e-mail message to Elmi's attorneys, with a copy to Hashi's attorney, which stated, "The Court cannot consider [the] letter as it exceeds the scope of the Court's request for proposed J&Ds, contains facts alleged to have occurred after the record closed on July 28, 2020, and appears to be *ex parte* communication." Elmi's attorneys served the epilogue document on Hashi's attorney the following day. Hashi's attorney promptly sent an e-mail message to the referee's law clerk asking that Elmi's post-trial submissions be stricken from the record.

After the district court filed the judgment and decree, Hashi requested a new trial on the ground that Elmi's attorneys had engaged in misconduct and that Hashi had been

prejudiced by the improper submissions. The district court denied that part of Hashi's new-trial motion. The district court stated in a written order that the epilogue document "is not in the Court's record and was not considered by the undersigned when developing the J&D." The district court elaborated by stating, "The undersigned did not read or otherwise consider the Epilogue in issuing its final decision." Accordingly, the district court reasoned that Hashi was not prejudiced by Elmi's submission of the epilogue document. The district court also noted that Elmi's attorneys cured the *ex parte* nature of the submissions by serving the relevant documents on Hashi's attorney one day later.

Hashi contends that a new trial is required by the first paragraph of rule 59.01, which provides that a district court may grant a new trial based on an "[i]rregularity in the proceedings of the court, referee, jury, or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair trial." Minn. R. Civ. P. 59.01(a). In this context, the word "irregularity" means "a 'failure to adhere to a prescribed rule or method of procedure not amounting to an error in a ruling on a matter of law.'" *Boschee v. Duevel*, 530 N.W.2d 834, 840 (Minn. App. 1995) (quoting 3 Douglas D. McFarland & William J. Keppel, *Minnesota Civil Practice* § 2411 (2d ed. 1990)), *rev. denied* (Minn. June 14, 1995). In general, a party seeking a new trial must establish that the alleged irregularity occurred and that he or she was prejudiced by the irregularity. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010). An irregularity is prejudicial if it "might reasonably have changed the result." *Id.* (quotation omitted). This court applies an abuse-of-discretion standard of review to a district court's

ruling on a motion for new trial. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018).

In this case, the record plainly shows that Hashi was not prejudiced by Elmi's attorneys' *ex parte* communication with the district court and submission of the epilogue document. The district court stated unequivocally that the epilogue document is not in the record, was not considered, and, furthermore, was not even read by the referee. Hashi has not called the district court's statements into question in any way. "Steps taken by a trial court in response to an 'irregularity' can cure the potential prejudice to a party." *Boschee*, 530 N.W.2d at 841. The referee and her law clerk appropriately handled the matter and effectively prevented any prejudice from occurring. Furthermore, the district court's statements make clear that Elmi's improper submissions did not change the ultimate result. *See Torchwood Props.*, 784 N.W.2d at 419.

Thus, the district court did not err by denying Hashi's motion for new trial based on Elmi's attorneys' improper post-trial submissions.

II. Evidence of Alleged Domestic Abuse

Hashi next argues that the district court erred by excluding evidence that Elmi had engaged in domestic abuse toward her and the parties' joint child.

One day after Elmi petitioned for dissolution, Hashi petitioned the district court, in a separate case, for an order for protection (OFP) against Elmi. She alleged in the OFP case that Elmi had engaged in various incidents of domestic abuse toward her and M.A.E. over a two-year period. The district court in the OFP case issued a temporary *ex parte* OFP and scheduled an evidentiary hearing on Hashi's petition. After an evidentiary hearing,

before the same referee who presided over this case, the district court dismissed Hashi's OFP petition and vacated the *ex parte* OFP. The district court in the OFP case found that Hashi's abuse allegations were vague and unclear, that her testimony was less credible than Elmi's testimony, and that she had not satisfied her evidentiary burden.

Before trial in this case, Elmi filed a motion *in limine* to exclude any evidence of domestic abuse. Elmi argued in a memorandum of law that such evidence is inadmissible on multiple grounds: collateral estoppel, lack of relevance, undue prejudice, and improper character evidence. Hashi responded in writing, and counsel for both parties argued the matter to the district court at the outset of the trial. The district court provisionally granted Elmi's motion on the ground of collateral estoppel and stated that Hashi could not introduce evidence about the OFP proceeding or evidence that the district court had considered but rejected in the OFP proceeding. But the district court also stated that its ruling did not preclude Hashi from offering any evidence and that the district court would entertain and rule on objections to evidence of domestic abuse as they arose at trial.

As it happened, on only one occasion during the trial did the district court exclude evidence of domestic abuse on the ground that it was repetitious of the OFP proceeding. On multiple occasions during the trial, Hashi testified about incidents in which Elmi allegedly abused her and M.A.E. Hashi explained in her testimony that, because of the prior incidents, she was concerned about leaving M.A.E. in Elmi's care and would not abide by a parenting order that awarded him parenting time on an overnight basis. Elmi testified that he did not abuse either Hashi or M.A.E. In the judgment and decree, the district court referred to Hashi's evidence of domestic abuse and found that domestic abuse,

as defined in section 518B.01 of the Minnesota Statutes, had not occurred. The district court explained that Hashi's testimony about alleged domestic abuse was not credible and that she had not supported her allegations with other persuasive evidence.

On appeal, Hashi contends that the district court erred by granting Elmi's motion *in limine*. Hashi's argument focuses on the law of collateral estoppel, without identifying the evidence that actually was excluded by the district court and without acknowledging the evidence of alleged domestic abuse that was admitted.

The doctrine of collateral estoppel prevents the relitigation of an issue that was litigated in a previous action. *State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 534 (Minn. 2015). The doctrine applies if:

(1) the issue to be addressed is identical to an issue in a prior adjudication; (2) there was a final judgment on the merits in the prior adjudication; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party received a full and fair opportunity to be heard on the adjudicated issue.

Id. Collateral estoppel "functions like an evidentiary ruling" that precludes a party from "presenting evidence that would result in the relitigation of a previously litigated issue." *State v. Lemmer*, 736 N.W.2d 650, 658 (Minn. 2007). "Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that we review de novo." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). An abuse-of-discretion standard of review generally applies to a district court's rulings on the admissibility of evidence. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 164 (Minn. 2012).

Hashi challenges only the first requirement of the collateral-estoppel doctrine. She contends that the first requirement is not satisfied on the ground that different legal standards apply to an OFP petition and a dissolution action. The collateral-estoppel doctrine precludes the relitigation of particular issues, not entire causes of action. *Lemmer*, 736 N.W.2d at 658. Furthermore, the collateral-estoppel doctrine may preclude the relitigation of findings of ultimate facts. *See State v. DeSchepper*, 231 N.W.2d 294, 300 (Minn. 1975); *Reil v. Benjamin*, 584 N.W.2d 442, 444 (Minn. App. 1998), *rev. denied* (Minn. Nov. 17, 1998); *In re McPherson*, 476 N.W.2d 520, 521-22 (Minn. App. 1991), *rev. denied* (Minn. Dec. 13, 1991).

In the OFP case, Hashi sought to prove that Elmi had abused her and M.A.E. and asked the district court to issue an OFP. To prevail in the OFP proceeding, Hashi was required to prove that Elmi engaged in “domestic abuse,” as that term is defined by statute. *See* Minn. Stat. § 518B.01, subd. 2(a) (2020). In this case, Hashi sought sole legal and sole physical custody, while Elmi sought joint legal and joint physical custody. To resolve the issue of custody, the district court was required to consider and apply twelve statutory factors concerning the best interests of the child. *See* Minn. Stat. § 518.17, subd. 1 (2020). The fourth statutory factor expressly asks “whether domestic abuse, *as defined in section 518B.01*, has occurred in the parents’ or either parent’s household or relationship.” *Id.*, subd. 1(a)(4) (emphasis added). The eleventh factor expressly refers to “domestic abuse as described in” the fourth factor. *Id.*, subd. 1(a)(11). Because Hashi sought to prove that Elmi had engaged in domestic abuse toward her or M.A.E. for purposes of obtaining sole legal and sole physical custody and denying Elmi parenting time, the district court was

required to determine, among other things, whether she had proved the same ultimate fact that she was required to prove in the OFP case. Thus, the first requirement of the collateral-estoppel doctrine—identical issues—is satisfied.

The district court's *in limine* ruling did not prevent Hashi from introducing evidence that had not been introduced in the OFP case. As stated above, the district court admitted a considerable amount of Hashi's evidence of alleged domestic abuse and only once excluded evidence on the ground that it had been introduced and ruled upon in the OFP case. In so doing, the district court properly applied its collateral-estoppel ruling. Hashi has not attempted to identify any particular occasion in which the district court applied collateral estoppel in an overly broad manner. Even if we were to assume that the district court did so, the error would be harmless in light of the voluminous evidence of alleged domestic abuse that was admitted. *See* Minn. R. Civ. P. 61.

Thus, the district court did not err by granting Elmi's motion *in limine* or by excluding evidence of alleged domestic abuse.

III. Child Support

Hashi argues that the district court erred by denying her motion for temporary, retroactive, or back child support.

In November 2019—eight months after the commencement of dissolution proceedings and seven months before trial—Hashi filed a motion in which she requested, among other things, temporary child support and past support. It appears that the district court did not rule on Hashi's motion before trial. In the judgment and decree, the district court denied Hashi's request, stating as follows:

[Hashi] requests that she be awarded retroactive child support as a part of these proceedings. She testified that [Elmi] provided no support to her following their separation. [Elmi] alleges that he repeatedly attempted to provide financial support to [Hashi] but that she took issue with the form of payments he attempted to make. The record reflects that [Elmi] made legitimate attempts to support [M.A.E.] but that these were rejected by [Hashi]. Under the circumstances, the Court does not find an award of back support to be appropriate.

After Hashi raised the issue in her motion for new trial, the district court again denied Hashi's request, stating as follows:

The Court's denial of retroactive child support is . . . supported by the record. "The trial court has broad discretion in determining child support obligations . . ." *Korf v. Korf*, 553 N.W.2d 706 (Minn. App. 1996). [Elmi's] child support obligation was established for the first time in the J&D. While the Court has discretion to award child support retroactive to the date of the petition, the Court did not find a retroactive award was appropriate in this situation given the absence of an original obligation and given [Elmi's] credible testimony that he attempted to financially support the child but was rebuffed by [Hashi].

In a dissolution action, a district court may order temporary child support pending the final disposition of the action. Minn. Stat. § 518.131, subd. 1(c) (2020). In considering the issue of temporary child support, a district court "shall be guided by the factors set forth in chapter 518A." *Id.*, subd. 7. A district court also has discretion to award retroactive child support for periods of time before the commencement of a dissolution action. *Korf v. Korf*, 553 N.W.2d 706, 710 (Minn. App. 1996); *see also Jacobs v. Jacobs*, 309 N.W.2d 303, 305 (Minn. 1981). In considering the issue of retroactive child support, a district court may consider "all payments made by the obligor since the time of the separation." *Korf*, 553 N.W.2d at 710. This court applies an abuse-of-discretion standard of review to a

district court's decisions on child support. *Id.* at 708; *Ver Kuilen v. Ver Kuilen*, 578 N.W.2d 790, 792 (Minn. App. 1998).

Hashi contends that the district court erred by denying temporary support based on a finding that Hashi had rejected Elmi's attempts to make payments to her during the pendency of the dissolution action. Hashi does not challenge the district court's finding of fact; she simply contends that the district court's reasoning is erroneous. But she cites no caselaw to support her argument. The general rule is that a district court may consider "all payments made by the obligor since the time of the separation." *Korf*, 553 N.W.2d at 710. The district court did so by referring to the evidence on that issue. The district court's decision is not illogical and, thus, does not reflect an abuse of discretion. *See Jacobs*, 309 N.W.2d at 305; *Korf*, 553 N.W.2d at 710.

Hashi also contends that she is entitled to past support under section 256.87, subdivision 5, of the Minnesota Statutes. That statute provides, in relevant part:

A person or entity having physical custody of a dependent child *not receiving public assistance* as defined in section 256.741 has a cause of action for child support against the child's noncustodial parents. . . . A noncustodial parent's liability may include up to the two years immediately preceding the commencement of the action. This subdivision applies only if the person or entity has physical custody *with the consent of a custodial parent or approval of the court.*

Id. (emphasis added). This statute does not apply in this case for two reasons. First, M.A.E. was receiving medical assistance at the time of Hashi's motion. *See* Minn. Stat § 256.741, subd. 1(b) (2020). That fact defeats the condition in the first sentence of the statute. Second, before the judgment and decree was filed, Hashi did not have physical custody of

M.A.E. with Elmi's consent or with court approval. That fact defeats the condition in the last sentence of the statute.

Thus, the district court did not err by not awarding Hashi temporary, retroactive, or back child support.

IV. Prohibition on Video-recording

Hashi last argues that the district court erred by prohibiting her from video-recording parenting-time exchanges.

In providing for parenting time in the judgment and decree, the district court specified the manner of the child's transitions as follows: "Unless mutually agreed upon otherwise in writing, all parenting time exchanges shall occur in the parking lot of the Edina Police Department The parties shall remain respectful during parenting time exchanges. *Neither party shall record parenting time exchanges.*" (Emphasis added.)

In its order denying Hashi's motion for a new trial, the district court elaborated on the prohibition on video-recording as follows:

The Court's order that the parties may not record parenting time exchanges is also supported by the record. Exchanges are required to occur in the parking lot at the Edina Police Department to minimize any potential conflict and to ensure each party feels safe during exchanges. Law enforcement is in the immediate vicinity and cameras are abundant at this exchange location. Additional recordings by [Hashi] are unnecessary and would only serve to increase parental conflict. Most importantly, having [Hashi] record exchanges would be detrimental to [M.A.E.] and place him in the middle of his parent's acrimony. Permitting [Hashi] to record parenting time exchanges would send a message to [M.A.E.] that [Elmi] is someone to fear. In any custody and parenting time decision, a child's best interests are the

paramount consideration. The decision to prohibit recording parenting time exchanges protects [M.A.E.]’s best interests.

Hashi contends that the district court’s restriction on video-recording parenting-time exchanges violates her right to free speech under the First Amendment to the United States Constitution. She does not cite any Minnesota caselaw in support of her argument. Instead, she cites four opinions of various lower federal courts, which are not binding on this court. *See Ness v. City of Bloomington*, 11 F.4th 914 (8th Cir. 2021); *Animal Legal Def. Fund v. Wasden*, 878 F.3d 1184 (9th Cir. 2018); *ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012); *Animal Legal Def. Fund v. Herbert*, 263 F. Supp. 3d 1193 (D. Utah 2017). All four opinions recognize that the making of a video- or audio-recording may be protected by the First Amendment, depending on the circumstances. *Ness*, 11 F.4th at 923; *Wasden*, 878 F.3d at 1203-05; *Alvarez*, 679 F.3d at 595-601; *Herbert*, 263 F. Supp. 3d at 1206-08. In all four cases, the plaintiffs sought to make video- or audio-recordings for the purpose of publishing the recordings to promote their positions on issues of public importance. *Ness*, 11 F.4th at 918-19; *Wasden*, 878 F.3d at 1190; *Alvarez*, 679 F.3d at 588-89; *Herbert*, 263 F. Supp. 3d at 1197-99.

For purposes of this non-precedential opinion, we assume without deciding that the Eighth Circuit’s *Ness* opinion provides the proper framework for analyzing Hashi’s argument. Under *Ness*, the first question is whether the district court’s order is a restriction on speech or a restriction on conduct. *See* 11 F.4th at 923. As the Eighth Circuit explained, “If the act of making a photograph or recording is to facilitate speech that will follow, the act is a step in the ‘speech process,’ and thus qualifies itself as speech protected by the First

Amendment.” *Id.* However, “If the photography or recording is unrelated to an expressive purpose, or if the ordinance prohibits conduct that imposes incidental burdens on speech, then the act of recording may not receive First Amendment protection.” *Id.* (citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011), and *Rumsfeld v. Foundation for Acad. & Institutional Rts., Inc.*, 547 U.S. 47, 62 (2006)).

The district court’s restriction is focused on and concerned with Hashi’s making of video-recordings, not with how the video-recordings might be used if they were created. Specifically, the district court prohibited the video-recording of parenting-time exchanges to avoid unnecessary parental conflict and to avoid a perception in M.A.E. that his father, Elmi, is dangerous. Furthermore, Hashi’s brief indicates that her free-speech interests are rather limited. She asserts only one purpose for making the video-recordings: to preserve evidence “if a dispute arose between the parties concerning the events of their parenting-time exchanges.” But the district court’s order notes that there are other video-cameras in the parking lot where exchanges are required to occur, which provides Hashi with another means of introducing the same type of evidence. Given the nature of the district court’s order and the nature of Hashi’s free-speech interests, the district court’s restriction is properly characterized as a restriction on conduct, not a restriction on speech. For that reason, Hashi does not have a First Amendment right to video-record parenting-time exchanges.

If we were to answer the first question in Hashi’s favor, her argument would encounter other obstacles. The second question is whether the district court’s restriction is content-neutral or content-based. *See id.* The answer to that question determines the level

of scrutiny of Hashi’s free-speech rights. *Id.* at 923-24. There is no obvious answer to the question whether the district court’s restriction is content-neutral or content-based. For purposes of this non-precedential opinion, we assume without deciding that the district court’s restriction is content-based, which implicates the strict-scrutiny standard. *Id.* Under strict scrutiny, a content-based restriction on speech is “presumptively unconstitutional” but may be upheld as constitutional if it “furthers a compelling interest and is narrowly tailored to achieve that interest.” *Id.* at 923 (citing *Reed v. Town of Gilbert*, 576 U.S. 155, 163-64 (2015)); *see also State v. Casillas*, 952 N.W.2d 629, 640 (Minn. 2020), *cert. denied*, 142 S. Ct. 90 (2021).

Accordingly, the third question is whether the district court’s prohibition on the video-recording of parenting-time exchanges furthers a compelling interest and is narrowly tailored to achieve that interest. *See Ness*, 11 F.4th at 924. This court previously has held that a district court’s restriction on a parent’s free-speech rights in a marriage-dissolution case may satisfy the strict-scrutiny test. In *Geske v. Marcolina*, 642 N.W.2d 62 (Minn. App. 2002), a father discussed an ongoing custody dispute in an interview on a television news broadcast. *Id.* at 65-66. During the interview, he revealed the names of his children and shared a photograph of them. *Id.* at 66. The children’s mother requested and obtained a permanent injunction that prohibited the father from publishing information about the children in that manner. *Id.* This court concluded that the injunction did not violate the father’s First Amendment right to free speech. *Id.* at 68-70. We reasoned that the district court had made clear findings concerning the harm to the children caused by the father’s

speech and affirmed the district court's finding that the best interests of the children justified the injunction. *Id.* at 69-70.

In this case, the district court prohibited the video-recording of parenting-time exchanges for the express purpose of avoiding parental conflict in the presence of M.A.E. and avoiding a situation that might cause the child to believe that his father is dangerous. The district court expressly found that the prohibition protects M.A.E.'s best interests. Hashi has not challenged the district court's order on that particular point. Accordingly, the district court's restriction serves a compelling interest. Furthermore, the prohibition applies only at parenting-time exchanges, when both parents and M.A.E. are likely to be present. Hashi is not prohibited from video-recording any other events. Moreover, the district court's restriction does not prohibit Hashi from using video-recordings of parenting-time exchanges that are created by the Edina Police Department. Accordingly, the district court's restriction is narrowly tailored to achieve the compelling interest. *See id.* at 68-70.

Thus, the district court did not err by prohibiting Hashi from video-recording parenting-time exchanges.

Affirmed.