**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A06-2315**

In the Matter of:
Jodie Lynn Rotter, petitioner,
Respondent,

vs.

Richard Earl Hansen,
Appellant.

**Filed May 20, 2008**
**Affirmed**
**Halbrooks, Judge**

Ramsey County District Court
File No. F906300357

Kelly J. Shannon, G & K Services Inc., 5995 Opus Parkway, Minnetonka, MN 55343 (for respondent)

Richard Earl Hansen, P.O. Box 491-264, Blaine, MN 55449 (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, Judge; and Schellhas, Judge.

**U N P U B L I S H E D  O P I N I O N**

**HALBROOKS,** Judge

In this pro se appeal, appellant challenges a district court's grant of an order for protection to respondent, prohibiting appellant from having contact with her. He contends that the district court erred in the burden of proof that respondent was subject to,

that the evidence did not support the granting of the order for protection, and that the district court judge was biased against him and improperly limited both his cross-examination of respondent and his direct testimony. We affirm.

## FACTS

Appellant Richard Hansen is the former boyfriend of respondent Jodie Rotter. The parties were never married, but they have two children together. Respondent sought and received a temporary ex parte order for protection (OFP) against appellant from the district court on December 1, 2004. On January 7, 2005, the district court entered a permanent OFP against appellant for the duration of one year. That OFP expired in January 2006 when respondent failed to appear at a hearing that she requested to seek an extension of the order.

Respondent subsequently petitioned for a new OFP several months later on April 3, 2006. The district court granted her petition and issued a temporary ex parte OFP that same day. A hearing to determine whether this temporary OFP should become permanent was scheduled for June 28, 2006.

At the hearing, respondent was represented by counsel; appellant appeared pro se. Respondent testified that appellant threatens to "get" her and to kill her on an ongoing basis. She stated that he last threatened to kill her one week before she filed for the OFP at issue here. Appellant also repeatedly calls and stops by respondent's house without permission. Respondent testified that appellant sometimes waits at a gas station down the block from her house and then chases her when she leaves her home. Respondent testified that this conduct and threatening behavior has made her very afraid of appellant.

The week before respondent filed for the OFP at issue, respondent stated that appellant pulled up next to her vehicle at a stop sign at 6:00 a.m. and started threatening to smash her vehicle and beat her. The couple's two children were in respondent's vehicle during this outburst. As respondent attempted to drive away, appellant pulled open the back door of her vehicle, where the children were sitting. Respondent had to quickly close the door to protect the children. She then drove a short distance to her mother's house and locked all the vehicle's doors to prevent appellant, who had followed her, from entering it.

Respondent also testified at the hearing that appellant had violated a prior OFP against him. This violation was reported to the police, and appellant was criminally charged but the charges were later dropped.

After respondent finished her direct testimony, appellant cross-examined her. This cross-examination was followed by appellant's direct testimony. At the conclusion of appellant's testimony, the district court issued a permanent OFP for a period of two years. The OFP prohibits appellant from having any contact with respondent, ordered him to complete a domestic-violence program, and required that he surrender any firearms for the duration of the order, including a handgun that was at respondent's home that appellant wanted to be returned to him. This appeal follows.

## D E C I S I O N

The first issue is whether the district court erred by imposing an incorrect burden of proof on respondent. Respondent argued and the district court agreed that she was

required to make a lesser showing to justify the issuance of a second OFP than she was to obtain her initial OFP against appellant.

The requirements for a person to obtain an OFP are set out in Minn. Stat. § 518B.01 (2006). The decision whether to grant an OFP is discretionary with the district court, *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005), but statutory interpretation is an issue of law, which we review de novo. *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64, 68 (Minn. 2006). To obtain an initial OFP, the petition for relief must allege the existence of "domestic abuse" as defined in Minn. Stat. § 518B.01, subd. 2(a). But Minnesota law sets forth less stringent requirements for granting a second OFP after an earlier order has expired. The statute states that if a prior OFP is no longer in effect,

> [t]he court may . . . grant a new order upon a showing that:
>
> (1) the [appellant] has violated a prior or existing order for protection;
>
> (2) the [respondent] is reasonably in fear of physical harm from the [appellant];
>
> (3) the [appellant] has engaged in acts of harassment or stalking . . . ; or
>
> (4) the [appellant] is incarcerated and about to be released, or has recently been released from incarceration.

Minn. Stat. § 518B.01, subd. 6a. Because respondent is seeking her second OFP against appellant, she must show that, among other alternatives, she was reasonably in fear of physical harm from appellant. *Id*. The district court correctly applied this lesser statutory burden at the June 28 hearing.

Appellant also challenges the district court's factual findings underlying the issuance of the OFP. This court will sustain a district court's findings of fact unless they

are clearly erroneous. Minn. R. Civ. P. 52.01. Appellant primarily argues that respondent lied in relating her version of what happened. He also notes that he denied much of what respondent alleged during his own testimony. But when there is conflicting evidence, as here, we defer to the district court's credibility determinations. *Id.*; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *see also State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003) (stating that "the weight and believability of witness testimony is an issue for the district court"). The district court was in a superior position to evaluate appellant's and respondent's credibility, and we defer to those determinations. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (stating that considerable deference is due to the district court's credibility determinations because it is in a superior position to evaluate such matters). Because the district court chose to credit respondent's testimony instead of appellant's, there is a sufficient factual basis underlying the decision to issue the OFP.

Appellant next claims that the district court was biased against him because the judge "barked" at him and gave him "terroristic" looks during the hearing. A judge has a duty to treat each party without bias or prejudice. Minn. Code Jud. Conduct, Canon 3A(5); *see also State v. Burrell*, 743 N.W.2d 596, 601 (Minn. 2008) (stating that a judge must perform the duties of the office impartially). "Whether a judge has violated the Code of Judicial Conduct is a question of law, which we review de novo." *State v. Dorsey*, 701 N.W.2d 238, 246 (Minn. 2005). Judicial bias may result in reversal if it arises from an extrajudicial source. *In re Estate of Lange*, 398 N.W.2d 569, 573 (Minn.

App. 1986). Regarding alleged bias rooted in judicial proceedings, our supreme court has stated that

> "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings . . . do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge."

*Byers v. Comm'r of Revenue*, 735 N.W.2d 671, 673 (Minn. 2007) (quoting *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994)).

Here, appellant does not allege the district court's bias was the product of some external source. Furthermore, we find no support in the record for appellant's assertion that the judge gave him "terroristic" looks. Appellant's subjective interpretation of the judge's facial expression does not, on this record, suffice to demonstrate any sort of judicial bias. The transcript of the hearing also reveals that the judge's purported "barking" at appellant was nothing more than an attempt to maintain courtroom decorum when appellant became argumentative and questioned the manner in which the hearing was being conducted. Such conduct does not constitute evidence of bias under the present circumstances. In sum, nothing in the record supports the notion that the judge harbored some sort of deep-seeded antagonism toward appellant that made a fair judgment impossible.

Appellant's final two claims are essentially challenges to the district court's evidentiary rulings that were made in an attempt to ensure that appellant's cross-

examination of respondent and his direct testimony complied with the applicable rules of evidence. Such evidentiary rulings rest "within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). Only relevant evidence is admissible at trial, and lay witnesses cannot speculate during their testimony. A lay witness must have first-hand knowledge of an event or fact to testify regarding the event or fact. Minn. R. Evid. 402, 602. While pro se litigants are given some latitude, *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987), they still must generally comply with court rules and procedures. *Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1983). Furthermore, the district court can exercise reasonable control over the questioning of witnesses to avoid undue harassment of the witness, to avoid the waste of time, and to facilitate the ascertainment of the truth. Minn. R. Evid. 611.

During appellant's cross-examination of respondent, he frequently asked irrelevant questions, often attempted to testify himself instead of questioning her, and asked respondent questions that called for speculation. Our review of the transcript indicates that the district court was well within its discretion in attempting to get appellant—a lay person who has no apparent knowledge of the rules of evidence—to ask nonspeculative, relevant questions and to prevent him from utilizing his cross-examination of respondent to testify himself.

Because of the district court's enforcement of the rules of evidence, appellant now claims that he "was not allowed to question" respondent. But after posing a myriad of

questions to her, appellant abruptly and on his own initiative stated, "I have no more questions, Your Honor. I'm ready to take the stand." Thus, it was appellant who terminated his own cross-examination, not the district court.

Appellant's direct testimony was in many ways similar to his cross-examination of respondent. The district court attempted to redirect appellant's testimony away from irrelevant matters—such as his stated desire that respondent return some of his personal effects—and toward the events that respondent testified to as the basis for her request for a new OFP. Appellant now claims that the district court did not let him testify to the extent he desired. The transcript of the hearing contradicts this claim.

Toward the end of the hearing, the following exchange occurred:

> [District Court]: [Is there] anything else you think is relevant?
> [Appellant]: Were you talking to me or—
> [District Court]: I'm—yes, I'm sorry, . . . anything else that's relevant?
> [Appellant]: Um, no, I would just like to emphasize the fact that [respondent] did lie.

The district court next asked appellant if there were "[a]ny witnesses that you have who have first-hand knowledge about the events we talked about today." Appellant responded that he had no witnesses. The record was then closed, and the OFP issued. The district court's attempts to enforce the rules of evidence was proper. In addition, the above-excerpted language shows that the duration of appellant's direct testimony was not constrained by the district court. We therefore conclude that the district court acted within its discretion in the management of appellant's direct testimony.

**Affirmed.**