STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1366

Kadi Beth Jackson, o/b/o Minor Children,
Respondent,

vs.

Robert Bradley Daniel,
Appellant.

Filed September 20, 2021
Reversed and remanded
Johnson, Judge

Nicollet County District Court
File No. 52-CV-20-194

Kadi Beth Jackson, Prior Lake, Minnesota (*pro se* respondent)

Robert Bradley Daniel, North Mankato, Minnesota (*pro se* appellant)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The district court issued a harassment restraining order after finding that Robert Bradley Daniel had harassed Kadi Beth Jackson. We conclude that the district court erred by unduly restricting Daniel's right to present evidence and by making findings of fact that are not supported by evidence admitted at the evidentiary hearing. Therefore, we reverse and remand for a new hearing.

FACTS

Daniel and Jackson were involved in a romantic relationship for approximately two months. Jackson ended the relationship in December 2019.

In April 2020, each party petitioned the district court for a harassment restraining order (HRO) against the other. The district court administrator opened two files, one for each petition. In the case that is now on appeal, Jackson alleged that Daniel had made unwanted visits to her home, had repeatedly contacted her and members of her family, and had made references to her on a social-media platform. The district court granted Jackson's petition on an *ex parte* basis and issued a temporary HRO. Daniel requested a hearing.

In July 2020, the district court conducted a consolidated evidentiary hearing on both parties' petitions. Before the hearing, Daniel mailed a packet of documents to the district court and to Jackson. Because of the COVID-19 pandemic, the hearing was conducted using a commercially available video-conferencing application. Each party was self-represented at the hearing.

Daniel was the first party to present evidence. He called three witnesses. His first witness was a friend who testified about Daniel's social-media posts. The district court asked Jackson whether she would like to cross-examine the first witness, and she did so. Daniel's second witness was a friend who testified that Daniel was at the witness's home for the entire afternoon and evening on the date on which Daniel allegedly was at Jackson's home. The district court asked Jackson whether she would like to cross-examine the second witness, and she did so. Daniel then called Jackson as a witness and examined her. During the examination, Daniel addressed comments to the district court, which responded

by advising Daniel that he could not testify at that time because he was not under oath and was questioning a witness. At a later point in the examination, the district court stated to Daniel: "We're doing your case now. So don't worry about her case against you. Because right now . . . I'm considering whether I should issue the order that you're requesting." At the conclusion of Jackson's testimony, the district court asked Daniel whether he had any other witnesses. He responded, "At this time, no."

The district court then asked Jackson whether she had any witnesses. She responded that she would testify on her own behalf. The district court stated to her, "I'm going to hear your side of this now as far as your restraining order request goes." Jackson testified in narrative fashion. When Jackson concluded her testimony, the district court asked her two follow-up questions. After doing so, the district court stated that it would take the matter under advisement. The district court did not ask Daniel whether he wanted to cross-examine Jackson or whether he wanted to present any evidence in opposition to Jackson's petition.

After stating that it would take the matter under advisement, the district court informed the parties that the *ex parte* temporary restraining order would remain in effect until the district court filed its written decision. The district court also stated to the parties that each of them had "the right to post whatever [they] want" on social media, "unless it's threatening." Further discussion ensued, during which the district court asked Jackson when Daniel had last made a social-media post, which caused Jackson to say "[a] week ago" and to "pull it up" and read it aloud. The district court stated to Jackson that the social-media posts that she had referenced during her testimony were "not offered into

evidence." Jackson explained that she had expected the hearing to be conducted in person and was prepared to present certain documents during the hearing. The district court stated that it would leave the record open for one week to allow Jackson to submit an exhibit depicting the social-media post that Jackson had just read aloud. Jackson asked whether the district court would like to receive documents related to "other things." The district court responded that a document with the most recently referenced social-media post was "all that I need." The record reflects that the district court later received from Jackson 78 pages of documents consisting of text messages, social-media messages, social-media posts, an e-mail message, a letter, and a handwritten statement. The district court's exhibit log indicates that none of Jackson's documents were received into evidence in this case.

Before concluding the hearing, the district court addressed Daniel by stating: "I do have all of your exhibits, Mr. Daniel, however, you never offered them into evidence. You asked her about them and she looked at them but you never offered them into evidence." Daniel responded by stating: "I didn't know that I was supposed to. I thought when I gave them to her they were in evidence. I'm not a lawyer. I don't know the process." The district court replied: "The process is that each one has to be offered into evidence and received into evidence. However, I have reviewed them and some are relevant, some aren't, but I get the general picture here." The record reflects that the district court received from Daniel 219 pages of documents consisting of text messages, social-media messages, and a letter. The district court's exhibit log indicates that none of Daniel's documents were received into evidence in this case.

In August 2020, the district court granted Jackson's petition in an eight-page order that includes 22 paragraphs of findings of fact and three paragraphs of conclusions of law. The order prohibits Daniel, for a two-year period, from having direct or indirect contact with Jackson and from being within 500 feet of her home and her workplace. The district court dismissed Daniel's petition in a separate six-page order.

Daniel appeals, on a self-represented basis, from the district court's grant of Jackson's petition and issuance of the HRO. Jackson has not filed a responsive brief. "If the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits." Minn. R. Civ. App. P. 142.03. This court previously issued an order stating that the case would be submitted on the merits pursuant to rule 142.03.

DECISION

Daniel argues that, for multiple reasons, the district court erred by granting Jackson's petition.

A.

We begin by considering Daniel's arguments that are procedural in nature. Specifically, he contends, in part, that he was not allowed to testify or to present all of his evidence and that the district court did not give him the same assistance and accommodation that it gave to Jackson during the hearing.

At a hearing on a petition for an HRO, each party has "the right to present and cross-examine witnesses, to produce documents, and to have the case decided pursuant to the findings required by" the HRO statute. *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995) (quotation omitted). As a general rule, self-represented litigants are expected

to comply with the applicable rules of court. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). But self-represented litigants often are unfamiliar with rules of court and standard courtroom procedures. Accordingly, a district court "has a duty to ensure fairness to a pro se litigant by allowing reasonable accommodation so long as there is no prejudice to the adverse party." *Kasson State Bank v. Haugen*, 410 N.W.2d 392, 395 (Minn. App. 1987).

In this case, the district court conducted the hearing in a manner that deprived Daniel of his right to present evidence. Specifically, the district court did not give Daniel an opportunity to testify about factual matters relevant to Jackson's petition after Jackson had presented evidence in support of her petition. Earlier in the hearing, Daniel declined to testify after calling three witnesses, saying that he had no additional witnesses "[a]t this time." The district court previously had stated that the hearing then was focused on Daniel's petition, not Jackson's petition. Consequently, Daniel reasonably could have expected that he would have an opportunity at a later stage of the hearing to give testimony in response to Jackson's petition. But after Jackson completed her narrative testimony, the district court asked follow-up questions and then rather abruptly took the matter under advisement, without giving Daniel an opportunity either to cross-examine Jackson or to present additional evidence, including his own testimony.

Furthermore, the district court did not give Daniel a reasonable opportunity to offer into evidence the exhibits that he had submitted to the court and disclosed to Jackson before the hearing. The district court acknowledged having received documents from Daniel but informed him that he had "never offered them into evidence." Daniel responded by stating

that he believed that the documents were in evidence but that he is "not a lawyer" and does not "know the process." That comment should have caused the district court to give Daniel an opportunity to offer the exhibits into evidence, especially when considered in light of Daniel's prior submission of the exhibits and his use of the exhibits during the hearing. In contrast, the district court previously asked Jackson whether she wanted to cross-examine Daniel's witnesses and assisted Jackson in formulating objections to Daniel's questioning. But when Daniel indicated that he wanted his documents to be admitted into evidence, the district court did not give him an opportunity to offer them. Accordingly, the district court did not fulfill its "duty to ensure fairness to a pro se litigant by allowing reasonable accommodation." *See Kasson State Bank*, 410 N.W.2d at 395.

Thus, the district court erred by unduly restricting Daniel's right to present evidence.

B.

We continue by analyzing Daniel's arguments that are more substantive in nature. Specifically, he contends that there is a lack of evidence in the record to support the district court's findings of fact.

A district court may issue an HRO if "there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2020); *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *rev. denied* (Minn. Sep. 29, 2004). "Harassment," for purposes of an HRO, is defined by statute to include "a single incident of physical or sexual assault" as well 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." Minn. Stat.

§ 609.748, subd. 1(a)(1) (2020). A single incident of the latter type of conduct is not harassment. *Peterson v. Johnson*, 755 N.W.2d 758, 766 (Minn. App. 2008). Furthermore, a district court may find harassment only if there is 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." *Id.* at 764 (citations and quotation omitted). Objectively unreasonable conduct includes conduct that "goes beyond an acceptable expression of outrage and civilized conduct." *Kush*, 683 N.W.2d at 846. Moreover, "A district court must base its findings in support of a restraining order on testimony and documents properly admitted." *Id.* at 844 (citing *Anderson*, 536 N.W.2d at 911-12). This court applies a clear-error standard of review to the district court's findings of fact. *Peterson*, 755 N.W.2d at 761.

In ruling on a petition for an HRO, a district court "must base its findings upon testimony and any documents properly introduced into evidence." *Anderson*, 536 N.W.2d at 911-12. In this case, however, the district court made multiple findings of fact that are not supported by evidence that was admitted at the hearing. This conclusion necessarily follows from the district court's statements that no exhibits were admitted into evidence, which is confirmed by the district court's exhibit log. Given that no exhibits were admitted, the only evidence that could support the district court's findings is the oral testimony of the three witnesses: Daniel's two friends and Jackson.

We have carefully reviewed the district court's findings of fact and the transcript of the hearing to determine whether the findings of fact are supported by witness testimony. Only a few of the district court's findings are so supported, as follows. The district court

properly found in paragraph 4 that Jackson ended the relationship by sending a written communication to Daniel; in paragraph 5 that Daniel lives in Mankato while Jackson lives in Prior Lake; in paragraph 6 that Daniel posted to his social media a photograph with Jackson and that she asked him to remove the photograph; in paragraph 7 that Jackson sent text messages to Daniel on January 1, 2020, in which she asked him to stop contacting her and others; in paragraph 14 that Daniel made an unwanted visit to Jackson's home in April 2020; in paragraph 17 that Daniel posted a video-recording on his social-media page and that a friend commented on it; and in paragraph 19 that Daniel claimed on social media that he lived in Shakopee. All other findings of fact are not based on evidence that was admitted at the hearing; all other findings can be justified only by the documents that were submitted to the district court but *not* admitted into evidence. Thus, the district court erred by making findings that are not based on "testimony and documents properly admitted." *See Kush*, 683 N.W.2d at 844 (citing *Anderson*, 536 N.W.2d at 911-12).

In sum, the district court erred by unduly restricting Daniel's right to present evidence and by making findings of fact that are not based on evidence that was admitted at the hearing. We note that the district court also prevented Jackson from introducing exhibits that she had prepared and intended to offer. Given the circumstances of this case and the nature of the errors, the appropriate remedy is to reverse and remand for a new hearing on Jackson's petition for an HRO. After the hearing, the district court shall make new findings of fact and conclusions of law based on the evidence admitted at the new hearing.

Reversed and remanded.