STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2321

Amber Allyson Rabideau,
n/k/a Amber Urban,
o/b/o Caden J. Rabideau, DOB 05/26/2006,
Respondent,

vs.

James Rabideau and Tina Rabideau,
Appellants.

Filed October 1, 2012
Affirmed
Collins, Judge[*]

Washington County District Court
File No. 82-CV-11-3704

James J. Rabideau and Tina M. Rabideau, Woodbury, Minnesota (pro se appellants)

Jessica J.W. Maher, Walling, Berg & Debele, P.A., Minneapolis, Minnesota (for respondent)

Considered and decided by Stauber, Presiding Judge; Chutich, Judge; and Collins, Judge.

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

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

COLLINS, Judge

Appellants challenge the harassment restraining order (HRO) entered against them. They contend that the district court abused its discretion when it acted on respondent's petition even though the petition did not meet the requirements under Minn. Stat. § 609.748, subd. 3 (2010). Appellants also argue that the district court's findings of fact are clearly erroneous and that the court abused its discretion when it issued the HRO. We affirm.

FACTS

Respondent Amber Rabideau is the daughter of appellants James and Tina Rabideau and the mother of C.J.R. Prior to the issuance of the HRO, the Rabideaus had been involved in a contentious custody dispute over C.J.R. On May 16, 2011, appellants' custody petition was denied and they were ordered to return C.J.R. to respondent's custody. After initially refusing to do so, eventually appellants returned C.J.R. to respondent's custody on May 19, 2011.

During the pendency of the custody proceeding, respondent and James Rabideau were involved in an altercation, out of which respondent was charged with and pleaded guilty to second-degree assault. A domestic-abuse no-contact order (DANCO) was issued against respondent in favor of James. Respondent was arrested for violating the DANCO after she had contact with James at a parenting-time exchange. The charge against respondent for violating the DANCO subsequently was dismissed.

By the end of May, 2011, Tina Rabideau was emailing respondent almost daily. Tina ostensibly directed most of the emails to 5-year-old C.J.R., but she sent the emails to respondent's email address. On May 24, James went to respondent's house and repeatedly knocked on her door; respondent testified that she did not respond because she was afraid James was trying to trick her into violating the DANCO.

After appellants' custody petition was denied, they repeatedly sought orders for protection against respondent in Scott and Washington Counties and filed another custody petition in Scott County. On June 17, 2011, respondent filed a petition and affidavit for an HRO. A hearing was held on September 16, and on October 25, 2011, the district court entered the HRO against appellants. This appeal followed.

D E C I S I O N

I.

Appellants first argue that the district court abused its discretion when it acted on respondent's petition for an HRO because respondent (1) did not identify herself as a victim of harassment; (2) failed to provide specific facts and circumstances as required by Minn. Stat. § 609.748, subd. 3; and (3) did not include a properly-notarized affidavit as required by the statute.

Generally, an appellate court will not consider matters not presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

Appellants did not raise any of these claimed deficiencies in the petition before the district court.[1] Thus, we decline to consider them on appeal.

II.

Appellants next argue that the district court (1) made findings that are not supported by the record; (2) failed to make specific findings of fact as required by Minn. R. Civ. P. 52.01; and (3) did not consider each appellant's actions independently.

A district court's "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is 'left with the definite and firm conviction that a mistake has been made.'" *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quoting *Gjovik v. Strope*, 401 N.W.2d 664, 667 (Minn. 1987)). Due regard will be given to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01. "A district court must base its findings in support of a restraining order on testimony and documents properly admitted." *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

A. The record supports the district court's findings of fact.

1. Findings of Fact #5, #6, #11

Appellants argue that the court erred in finding #5 when it stated that:

[1] Appellants' attorney did question respondent to determine the identity of the person who notarized her petition. The district court interjected that a person of that name "works down at the counter where you file the petition." Appellants' attorney replied "fair enough," and did not object.

> [Respondent] was arrested and charged with violating the DANCO in Washington County Court File No. 82-CR-11-622, when James appeared at a parenting time exchange after previously been [sic] ordered by the Court to not take part in any parenting time exchanges. Although James had been ordered to not participate in the exchanges, he was present and called the police to report that [respondent] had violated the DANCO. The charges against [respondent] were later dismissed.

We disagree. The parenting-time exchange at which James was present, and reported a violation of the DANCO by respondent, occurred in February 2011. Appellants assert that the restriction prohibiting James from participating in parenting-time exchanges was then no longer in effect. Appellants contend that a hearing on May 14 (year unspecified) rescinded the restriction. However, it is evident from two orders in the record that the restriction was indeed in place when the alleged DANCO violation occurred. One order, issued on September 28, 2010, restricted James from participating in parenting-time exchanges. Another order, issued on February 18, 2011, also prohibited James from participating in the parenting-time exchanges. One or both of these orders would have been in effect at the time.

Appellants also argue that findings #6 and #11 are not supported by the record. In sum, appellants argue that respondent's fear that appellants were setting her up for a DANCO violation was only speculation. But because we give due regard to the district court's opportunity to assess the credibility of witnesses, and these findings necessarily imply that the court believed respondent rather than appellants, these findings are supported by the record. Thus, these findings are not clearly erroneous. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (deferring to a district court's implicit

credibility determination); *Vettleson v. Special Sch. Dist. No. 1*, 361 N.W.2d 425, 428 (Minn. App. 1985) (applying clearly erroneous standard to an implicit finding of fact).

2. Finding of Fact #8

Appellants contend that the district court's finding that respondent "was unable to contact James and Tina directly because of the DANCO" is incorrect. Appellants argue that respondent could have contacted Tina directly, because the DANCO only applied to James. But in the context of the entire record, such a modification of finding #8 does not materially affect the ultimate conclusion that the district court did not abuse its discretion when it issued the HRO.

3. Findings of Fact #9, #10

Appellants argue that these findings rely on evidence that was presented outside of the petition and affidavit for an HRO. However, the district court may rely on evidence properly admitted at the hearing. *Kush*, 683 N.W.2d at 844. The June 18 email referenced in finding #9 was properly admitted at the hearing. And although finding #10 relates to allegations made in the Scott County custody case, this is also information that respondent testified about during the hearing. Appellants do not claim that respondent's testimony was improperly admitted. Because these findings are supported by properly-admitted substantial evidence in the record, they are not clearly erroneous.

B. The district court's findings of fact are sufficiently specific.

"'The purpose of requiring findings is to permit meaningful review upon appeal and it is therefore necessary that trial courts find facts and state conclusions clearly and specifically.'" *Crowley Co. v. Metro. Airports Comm'n*, 394 N.W.2d 542, 545 (Minn.

App. 1986) (quoting Minn. R. Civ. P. 52.01, 1985 advisory comm. note). The district court made numerous findings of fact relating to specific incidents. Among them, the court found that James made an uninvited visit to respondent's house on May 24, 2011. The court also found that Tina emailed respondent almost daily beginning on May 20, 2011, and that the emails were addressed to C.J.R. Furthermore, the court found that appellants' actions made respondent fearful and intimidated, and concluded that appellants' actions had a substantial adverse effect on the safety, security, and privacy of respondent and C.J.R. The court here clearly and particularly set out the facts that it found and stated its conclusions of law, sufficient for review upon appeal.

C. The district court considered each appellant's actions independently.

The district court duly considered whether appellants each engaged in repeated incidents of harassment.[2] The court found that (1) Tina sent multiple emails and a text message to respondent; (2) James appeared at respondent's home uninvited; and (3) James and Tina jointly filed four domestic-abuse actions against respondent in Scott and Washington Counties, as well as an additional custody petition in Scott County.

III.

Finally, appellants argue that the district court abused its discretion in issuing the HRO because their conduct did not rise to the level of harassment and that events the

[2] Appellants rely on an unpublished case to contend that an HRO must be reversed if the district court did not consider whether each member of a family engaged in repeated incidents of harassment. Not only was the opinion cited distinguishable from the facts presented here, but an unpublished opinion issued by this court is not precedential. Minn. Stat. § 480A.08, subd. 3(c) (2010).

court found to constitute harassment are not adequately supported by the evidence. We disagree.

"A district court's issuance of a harassment restraining order is reviewed under an abuse of discretion standard." *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000). "[T]his court will reverse the issuance of a restraining order if it is not supported by sufficient evidence." *Kush*, 683 N.W.2d at 844. "A court may grant a harassment restraining order when the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment." *Id.* (quotation omitted). Harassment is defined as, among other things,

> a single incident of physical or sexual assault or 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, regardless of the relationship between the actor and the intended target . . . .

Minn. Stat. § 609.748, subd. 1(a)(1) (2010).

Respondent testified about (a) the uninvited visit James made to her home on May 24, 2011, noting that C.J.R. was present when James was knocking on the door; (b) the emails Tina sent her, addressed to C.J.R.; and (c) at least one email and one text message that Tina sent directed to respondent. Copies of the emails that respondent received were admitted in evidence. Respondent also testified that appellants filed orders for protection in Scott and Washington Counties and filed another custody petition in Scott County. Respondent testified that she suspected appellants were watching and following her in her car and that she did not feel safe taking C.J.R. to the park or allowing him on the

sidewalk outside her home. She also testified that she sent a letter, through her attorney, informing appellants that she no longer wanted them to contact her.

There was sufficient evidence in the record of repeated, unwanted acts by each appellant to support issuance of the HRO. Tina sent multiple emails and filed multiple actions against respondent. James made an uninvited visit to respondent's home and also filed multiple actions against respondent. There is also sufficient evidence that these acts had a substantial adverse effect on the safety, security, or privacy of respondent and C.J.R. Respondent was afraid to take C.J.R. to the park or to allow him to play on the sidewalk in front of their home. To our satisfaction, the district court did not abuse its discretion by issuing the HRO.

Affirmed.