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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1203**

Jennifer Lund, et al.,  
Respondents,

vs.

Michael J. Brouillette,  
Appellant.

**Filed November 18, 2008  
Affirmed  
Minge, Judge**

Dakota County District Court  
File No. C2-07-12736

Jennifer Lund, 2125 Sapphire Lane, Eagan, MN 55122 (pro se respondent)

Michael James Brouillette, P.O. Box 111004, St. Paul, MN 55111-0004 (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Lansing, Judge; and  
Minge, Judge.

**UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant challenges the issuance of a harassment restraining order. Because we conclude that the district court did not clearly err in finding facts supporting the order and the record supports the breadth of the order, we affirm.

## FACTS

Respondents Jennifer Lund and Ricky Spreeman petitioned the district court for a harassment restraining order under Minn. Stat. § 609.748 (2006), alleging that appellant Michael Brouillette, who is Lund's ex-boyfriend, had harassed them numerous times between March 2004 and March 7, 2007. In an accompanying affidavit, Lund and Spreeman alleged that Brouillette's harassment included "tracking" the whereabouts of Lund, making uninvited visits to and burglarizing their home, damaging Lund's property, calling Lund disreputable names, making harassing phone calls, and continuously threatening that the respondents would be killed by Brouillette, the Hell's Angels biker gang, or Brouillette's "buddies." Brouillette denied the allegations.

At the hearing on the petition, the district court heard testimony from Brouillette, Lund, and Spreeman.<sup>1</sup> Lund testified that Brouillette had harassed Spreeman and her for the past three years. Lund stated that, due to this conduct, she and Spreeman had moved three times in an effort to hide, but Brouillette always found them. Lund testified that Brouillette's most recent series of contacts began on February 7, 2007, when he started calling Lund and Spreeman on Spreeman's cell phone. Lund stated that, on February 7, she was on a business trip in Phoenix, Arizona with Spreeman. Brouillette recently had been discharged from probation. During one call, Brouillette told Spreeman that he knew

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<sup>1</sup> The respondents also attempted to enter into evidence three Eagan Police Department incident reports, dating from February 7, 2007, February 8, 2007, and March 5, 2007, which detail interactions between Brouillette and the respondents. Although the district court did not receive the reports into evidence and they are not a part of the record, they remained in the district court file. Because the reports are not part of the record, we do not consider them.

the couple's flight time back to Minneapolis, what hotel they were staying at, what Lund was doing in Phoenix, and Lund's home address in Eagan. This made Lund "really nervous." According to Lund, Brouillette called Lund's home while she was in Arizona and spoke to Lund's babysitter, asking the babysitter, "Hey baby, what time can I come over?" Spreeman and Lund were especially disturbed by this phone call because Brouillette was aware that they were in Arizona. Lund testified that she and Spreeman became very irate with Brouillette and returned at least two of his phone calls. According to Lund, this did not stop Brouillette from continuing to call and harass the respondents. Out of "anger," "frustration," and prompting from law enforcement, Lund and Spreeman eventually changed their cell and home phone numbers and in March 2007 applied for the restraining order.

Spreeman testified that Lund and he had been in a "three-and-a-half year battle" with Brouillette. Spreeman stated that he consistently received death threats from Brouillette, which included Brouillette claiming the ability to use the Hell's Angels and the Navy Seals to carry out the murders.

Brouillette testified that he placed four or five calls to Spreeman and Lund's cell phones from February 7 to February 11, 2007. He claimed that he placed these calls to tell Spreeman and Lund to leave him alone. He denied that he called the babysitter. Brouillette also submitted a tape recording of calls made to him by Lund and Spreeman. Brouillette claimed that the recording shows that Spreeman and Lund had been harassing him. Brouillette testified that he previously tried to get a restraining order on the

respondents, but he was unsuccessful. He also testified that he did not ride with the Hell's Angels.

The district court found that Brouillette had made four or five telephone calls. The district court read the statutory definition of harassment to the parties, determined that Brouillette's calls were "clearly unwanted" and had a "substantial impact" on Lund and Spreeman, concluded that the calls constituted harassment and granted the restraining order. In addition to prohibiting Brouillette from harassing or having contact with Lund or Spreeman, the order requires Brouillette to stay at least one mile away from the respondents' residence and to stay away from Spreeman's place of business. The order specifies that it remains in effect until April 16, 2009. This appeal follows.

## D E C I S I O N

### I.

The first issue is whether the district court abused its discretion when it granted the harassment order for protection. "An appellate court reviews a district court's grant of a harassment restraining order under an abuse-of-discretion standard." *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). It is sufficient if the district court finds that the perpetrator's "actions had, or were intended to have, a substantial adverse effect on the safety, security, or privacy of" the petitioner. *Id.* at 844. A district court's findings of fact are reviewed for clear error, but we will "reverse the issuance of a restraining order if it is not supported by sufficient evidence." *Id.* at 843-44. Although remand may be required if the district court fails to make adequate findings, remand is unnecessary if this court can infer the findings from the

district court's conclusions. *Welch v. Comm'r of Pub. Safety*, 545 N.W.2d 692, 694 (Minn. App. 1996).

“Harassment” includes “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 . . . 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) (2006). The law provides that a district court may issue a restraining order if it finds “reasonable grounds to believe that [Brouillette] has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a)(3) (2006). “The determination of whether certain conduct constitutes harassment may be judged from both an objective standard, when assessing the effect the conduct has on the typical victim, and a subjective standard, to the extent the court may determine the harasser’s intent.” *Kush*, 683 N.W.2d at 845. Inappropriate or argumentative statements alone cannot be considered harassment. *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002). However, a party’s actions need not be obscene or vulgar to constitute harassing conduct. *Welsh v. Johnson*, 508 N.W.2d 212, 216 (Minn. App. 1993).

The record supports the district court’s finding of harassment. Lund and Spreeman testified about a considerable history of unwanted contact with Brouillette. Lund is his ex-girlfriend. She and Spreeman had tried to avoid Brouillette for three or more years, but Brouillette persisted in finding them. Brouillette admitted that he placed four or five calls to Spreeman and Lund’s cell phones from February 7 to February 11, 2007. Spreeman testified that Brouillette had made death threats over the phone. The

call that Brouillette made on February 7, 2007 to Spreeman's cell phone and a subsequent call to her babysitter both disturbed and irritated the respondents. Brouillette's claim that his calls were not harassing because he merely was *returning* phone calls to the respondents presents questions of characterization and credibility, which are determined by the district court. In *Kush*, the court found that one party may harass another party over the phone even if the victim is the party that placed the call. 683 N.W.2d at 844. In this case, even if Brouillette was returning phone calls made to him by Lund and Spreeman, this fact would not preclude the conclusion that Brouillette engaged in harassing conduct.

Here, the district court's findings that Brouillette placed four or five harassing, unwanted phone calls to the respondents that had a "substantial impact" on them was an adequate basis for the order. Although the district court did not discuss any other allegations made by the respondents or by Brouillette and made no other factual findings, we assume that the district court concluded the factual grounds identified were adequate to support its decision and that it did not need to have a more expansive statement.

## **II.**

The second issue is whether the district court abused its discretion when it ordered Brouillette to stay one mile from the respondents' residence. Again, we review the district court's order under an abuse-of-discretion standard. Under Minnesota law, when the requirements for a harassment restraining order are met, the district court "may grant a restraining order ordering the respondent to cease or avoid the harassment of another

person or to have no contact with that person . . . .” Minn. Stat. § 609.748, subd. 5(a) (2006).

The district court ordered the one-mile buffer after Lund expressed concern that Brouillette had driven by her home on his motorcycle on the night before the hearing. The district court found that the distance was “not unreasonable.” Because we give high deference to the district court’s exercise of discretion and because Brouillette provides no legal basis for his claim that a one-mile buffer around a victim’s house is unreasonable, we conclude that the district court did not abuse its discretion when ordering Brouillette to remain one mile from the respondents’ residence.

### **III.**

The third issue is whether the district court abused its discretion when it ordered the restrictions to remain in effect for two years. Again, we review the district court’s order under an abuse-of-discretion standard. Under Minnesota law, the district court may grant relief through a restraining order “for a fixed period of not more than two years.” Minn. Stat. § 609.748, subd. 5(a)(3) (2006). In this case, the district court heard testimony from Lund and Spreeman that Brouillette had persisted in unwanted contact with them for three or more years prior to the hearing. The district court had the power to order the two-year duration under Minn. Stat. § 609.748. Given the apparent seriousness of Brouillette’s threats and his persistence in finding and contacting Lund and Spreeman, we conclude that the district court was well within its discretion when establishing the two-year duration of the restraining order.

We are aware that this case is one of several that has resulted from a particularly prolonged and troubling breakup between Brouillette and Lund. We are aware of two other recent appeals before this court initiated by Brouillette against Lund. *See Brouillette v. Lund*, No. A07-1753 (Minn. App. Sept. 9, 2008); *Brouillette v. Lund*, No. A07-1880 (Minn. App. filed Oct. 2, 2007). Brouillette should recognize that the public, judicial record makes it clear that his conduct involves much more than five or six harassing phone calls.

**Affirmed.**

Dated: