STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2069

Mackenzie Hanson, petitioner,
Respondent,

vs.

Austin Alexander Burridge,
Appellant.

Filed August 7, 2017
Affirmed
Connolly, Judge

Dakota County District Court
File No. 19AV-CV-16-3039

Mackenzie Hanson, Rosemount, Minnesota (pro se respondent)

Joseph P. Tamburino, Hillary B. Parsons, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

CONNOLLY, Judge

Appellant challenges the harassment restraining order granted to respondent, arguing that the district court abused its discretion in issuing the order. Because we see no abuse of discretion, we affirm.

FACTS

Respondent Mackenzie Hanson and appellant Austin Burridge were both university students living in the same dormitory. Respondent filed a petition for a harassment restraining order against appellant. At the hearing on the petition, she testified that, on the night of October 29-30, 2016, she fell asleep lying next to appellant on a futon in his dorm room. She testified further:

> I woke up on my back and . . . my clothes were on but my legs were apart and we were both under one of the blankets . . . [Appellant] had his knee over one of my knees . . . and he had . . . one of his hands between my legs and then was touching me, sexually. And at one point, he was . . . moving his hips into my thigh. And, I don't know after how long, I moved onto my side, hoping he'd leave me alone. And he wrapped his arm around my waist and, at that point, I got up and I left the room.

The district court asked respondent if appellant penetrated her vagina with his hand or fingers; she answered, "No, he didn't penetrate . . . but he was trying to move my clothes and his fingers were in between my legs, on top of my clothes." The district court asked, "Are you sure that he [] touched you over your clothing between your legs?" and respondent answered, "Yes." The district court asked respondent to describe what she meant by touching, and she answered, "Since my legs were apart, he had his hand in

between my legs but my shorts were on and he was . . . rubbing his fingers back and forth over my genitals." When the district court asked respondent how long this went on, she said she was not sure, because she had been asleep and "woke up to it . . . the parts that I remember, maybe, like, five minutes." The district court asked respondent why she had not reacted to appellant's touching for five minutes, and she said she was "too scared to [react] and . . . half asleep."

The district court found that:

> [Appellant and respondent] were next to each other with two others on the futon. [Respondent] fell asleep next to [appellant.] I find that . . . she was awakened because [appellant] had his hands on her vagina area, that he touched her for several minutes, that his touching her was for the purpose of sexually assaulting her or to gain some type of sexual gratification. I find that there was no consent by [respondent] to be touched.
>
> I'm not persuaded that [respondent] did not write everything verbatim in the petition as to what happened. I have no indication that [she] would make up such a story. . . .
>
> . . . .
>
> [B]ased on the testimony that I've heard, I'm convinced that . . . [respondent] has proven that she was sexually assaulted by [appellant]. Therefore, I am issuing a harassment restraining order. This order will be in effect for a period of two years.

The district court told appellant that he would have to move out of the dormitory in which he and respondent had been living.

Appellant challenges the harassment restraining order, arguing that it was an abuse of the district court's discretion.

D E C I S I O N

A district court's findings of fact, whether based on oral or documentary evidence, shall not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01. A district court may issue a harassment restraining order "if [it] finds at the hearing that there are reasonable grounds to believe that the [accused] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2016). This court reviews the district court's grant of a harassment restraining order under an abuse-of-discretion standard. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000).

Appellant argues first that the district court abused its discretion by not requiring respondent to prove that appellant touched her with sexual intent. But, in the context of sexual assault, "a showing of sexual intent does not require direct evidence of the defendant's desires or gratification because a subjective sexual intent typically must be inferred from the nature of the conduct itself." *State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *review denied* (Minn. Dec. 14, 2010).[1] Appellant does not indicate what proof respondent could have provided other than her testimony at the hearing and he does not cite any case in which a victim of sexual harassment was required to prove that harassment occurred by providing more than testimony.

[1] However, while no direct evidence of sexual intent is required, direct evidence that the defendant intended intimate contact to occur is required to establish sexual contact. *Id.* The district court's questions to respondent about what she meant by "touching" and how long the touching continued before she responded to it established that appellant intended his intimate contact of respondent to occur.

Appellant also argues that the district court erroneously shifted the burden of proof to appellant by asking him, "Why would [respondent] tell such a story if it's not true?" Appellant answered the question by saying, "I'm not the one to know the answer for that." But the district court was giving appellant an opportunity to explain any motive respondent might have had to fabricate the story, not shifting to appellant the burden of proof. The district court found "no indication that [respondent] would make up such a story." A district court's findings of fact, whether based on oral or documentary evidence, shall not be set aside unless they are clearly erroneous. Minn. R. Civ. P. 52.01.

Finally, appellant argues that the district court failed to consider the facts that the state did not criminally charge him and the university did not suspend or expel him. But whether appellant was guilty "beyond a reasonable doubt" of breaking the law or of violating university regulations was not the issue here: the issue was whether there were "reasonable grounds to believe that [he had] engaged in harassment" of respondent. *See* Minn. Stat. § 609.748, subd. 5(a)(3). The purpose of the restraining order was to protect respondent, not to punish appellant. Thus, the fact that neither the judicial system nor the university took any action against appellant was not relevant, and the district court did not abuse its discretion by not considering that fact.

Affirmed.