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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0211**

Sarah Yule, petitioner,
Respondent,

vs.

Jan Kehlenbeck,
Appellant.

**Filed September 5, 2017
Affirmed
Rodenberg, Judge**

Anoka County District Court
File No. 02-CV-17-57

Sarah Yule, Coon Rapids, Minnesota (pro se respondent)

David R. Lundgren, Adam T. Johnson, Lundgren & Johnson, PSC, St. Paul, Minnesota
(for appellant)

Considered and decided by Kirk, Presiding Judge; Rodenberg, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Jan Kehlenbeck appeals from the district court's grant of a harassment restraining order (HRO). She argues that the district court abused its discretion by allowing testimony regarding an event not noticed in the petition for the HRO and by limiting her

cross-examination of respondent Sarah Yule, and argues that the record does not support the district court's decision. We affirm.

FACTS

Respondent and B.B. have a 14-year old daughter, A.Y. Respondent and B.B. separated shortly after discovering respondent was pregnant with their daughter. In late 2015, B.B. met appellant, and they began dating. Appellant developed a relationship with A.Y. In December 2015, A.Y. was the victim of an assault.

Appellant and respondent exchanged text messages on September 8, 2016, and the exchange concluded with respondent asking appellant to stop contacting her. On January 1, 2017, appellant sent a text message to respondent and B.B. that criticized respondent's parenting of A.Y. Respondent had set her phone to block messages from appellant, so she did not receive this message. Appellant then sent this same text message to her friends, and one of appellant's friends forwarded the message to respondent on January 3, 2017.

On January 4, 2017, respondent requested and received an ex parte temporary HRO against appellant. In the petition for the HRO, respondent described appellant's harassing behavior, claiming that appellant had (1) reported respondent to child-protection authorities multiple times and stated that respondent was using drugs; (2) made false accusations to respondent's employer, causing respondent to be fired; (3) sent respondent harassing texts on September 8, 2016; and (4) sent text messages to respondent "from" other numbers after respondent had asked appellant to not contact her and had blocked messages from appellant's cell phone.

At a hearing on January 17, respondent testified about the harassing behavior she described in her petition. Respondent also testified that appellant had violated the temporary HRO by sending her a text message on January 9 through another person, B.B. Appellant testified at the hearing. She denied that she had contacted child protection to report that respondent used drugs. She also denied contacting respondent's employer. Appellant admitted that she had sent respondent the text messages on September 8 and January 1, and that respondent received a copy of appellant's January 1 text from one of appellant's friends on January 3. But appellant invoked her Fifth Amendment right to not incriminate herself and refused to answer questions about whether she sent B.B. a text message to relay a message to respondent on January 9 in violation of the temporary HRO.

During the hearing, appellant objected to respondent testifying about the January 9 text message, arguing that it was not a basis for issuing an HRO because it was not included in the original petition. The district court overruled her objection. The district court also restricted appellant from cross-examining respondent about the assault on A.Y. over appellant's arguments.

The district court issued an HRO restricting appellant from contacting respondent for two years, making findings of fact in support of its decision. The district court found that the texts sent to respondent on January 1 and January 3 were "flat out unkind," that appellant instructed her friend to send the January 3 text message to respondent, and that appellant attempted to contact respondent on January 1 and January 9. Although respondent had requested that the HRO restrain appellant from harassing or having contact with A.Y., the district court denied that relief.

This appeal followed.

D E C I S I O N

Appellant raises three arguments on appeal. First, she argues that the district court abused its discretion by allowing respondent to testify about a text message that appellant sent on January 9, an allegation not included in the original petition. Second, she argues that the district court abused its discretion by not allowing her to cross-examine respondent about the circumstances surrounding the assault of A.Y. Finally, appellant argues that the evidence is insufficient to support the district court's issuance of an HRO.

I. The district court did not abuse its discretion in its evidentiary rulings.

Appellant challenges two of the district court's evidentiary rulings during the hearing. Evidentiary rulings are within a district court's discretion, and this court will only reverse such rulings for a clear abuse of that discretion. *Johnson v. Washington Cty.*, 518 N.W.2d 594, 601 (Minn. 1994). An appellant is only entitled to a new hearing based on an erroneous evidentiary ruling if she demonstrates the error was prejudicial. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997). An evidentiary error is prejudicial if the error might reasonably have changed the result of the trial. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 51 (Minn. App. 1998).

Appellant first argues that the district court should not have permitted respondent to introduce evidence of harassment that took place after respondent petitioned for an HRO without having amended the petition to include the postfiling incident of claimed harassment.

Minnesota law requires a petitioner to state the “specific facts and circumstances from which relief is sought.” Minn. Stat. § 609.748, subd. 3(a) (2016). The law does not require that every detail of the alleged harassment must be catalogued in the petition. Where, as here, the claimed harassment continues after the petition is filed, evidence of that continued postfiling harassment is relevant and admissible without an amendment of the petition to encompass each additional incident of harassment. We see no abuse of the district court’s discretion concerning this issue.

Appellant next argues that the district court abused its discretion when it did not allow her to cross-examine respondent about the circumstances surrounding the assault of A.Y. She argues that this issue is relevant because it shows that her messages to respondent were based on a reasonable concern for A.Y. We disagree.

Only relevant evidence is admissible. Minn. R. Evid. 402. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Minn. R. Evid. 401. The question of whether respondent was somehow responsible for the assault of A.Y. does not make it more or less probable that appellant’s text messages were harassing. This issue also has no relevance to whether appellant’s conduct had or was intended to have an effect on respondent’s safety, security, or privacy. The district court did not abuse its discretion in limiting appellant’s cross-examination to issues relevant to whether an HRO should be issued.

II. The record supports the district court's grant of an HRO.

Appellant argues that the record does not show that her actions were repeated incidents of unwanted acts, words, or gestures that were objectively unreasonable and had or were intended to have an adverse effect on respondent's safety, security, or privacy.

We review a district court's issuance of an HRO for abuse of discretion and will reverse the order if it is not supported by sufficient evidence. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We will not set aside a district court's factual findings unless clearly erroneous, and we give deference to a district court's credibility determinations. *Id.* Whether the facts found by the district court satisfy the statutory criteria for harassment is a question of law, which we review de novo. *See Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008) (explaining that the authority to grant an HRO is statutory and that appellate courts review questions of statutory interpretation de novo).

A district court may issue an HRO if it finds that there are reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3) (2016). Harassment is defined to include, among other things, a single act 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." *Id.*, subd. 1(a)(1) (2016). Respondent alleged no act of assault by appellant.

To obtain an HRO, a petitioner must show both (1) objectively unreasonable intent or conduct on the part of the harasser and (2) an objectively reasonable belief on the part

of the person subject to harassment that the conduct had a substantial adverse effect on the person's safety, security, or privacy. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). Objectively unreasonable conduct is limited to conduct that "goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect on another's safety, security or privacy." *Kush*, 683 N.W.2d at 846. Statements that are merely argumentative or inappropriate do not rise to the level of harassment. *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000) (stating that an ex-husband's criticism of his ex-wife's parenting decisions and stating he wanted joint legal and physical custody of the children was not harassment).

The record supports the district court's finding that appellant sent text messages, or had text messages sent by others, to respondent on January 1, January 3, and January 9. Appellant admitted that she sent the message to respondent on January 1 and that she later forwarded it to her friends. Respondent testified and provided corroborating evidence that she received a message from a phone number other than appellant's number on January 3, and that appellant sent B.B. a text message with a message to relay to respondent on January 9. The district court found respondent's testimony about the text messages credible. While the district court could have made different findings based on this record, the findings it did make are supported by the record. *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

Appellant also argues that the text messages were objectively reasonable because the messages were intended to "bring about positive change in the raising of a young child," citing two of our previous cases. *See Peterson*, 755 N.W.2d at 765-66 (holding that

reporting specific concerns of child safety to the police is not harassment); *Witchell*, 606 N.W.2d at 732 (holding that an ex-husband's criticism of his ex-wife's parenting decisions in a notebook specifically intended to facilitate their communication regarding parenting issues was not harassment). *Peterson* and *Witchell* are distinguishable from this case. Unlike the father in *Witchell*, appellant was not using an agreed-upon channel of communication to express her parenting concerns and was instead texting her concerns to respondent and multiple other people. 606 N.W.2d at 732. When respondent blocked appellant's text messages, appellant sent the messages to third persons who forwarded them to respondent. Also, unlike the father in *Peterson*, appellant did not report specific concerns to police, but instead sent generalized criticisms to respondent and others. 755 N.W.2d at 765-66. We agree with the district court that the content and means of delivering the messages were objectively unreasonable and intended to cause or did cause a substantial adverse effect on respondent's safety, security, or privacy.

Finally, appellant argues that the record does not support a finding that respondent had an objectively reasonable belief that appellant's conduct had a substantial adverse effect on respondent's safety, security, or privacy. Specifically, appellant argues that respondent did not testify or offer evidence as to what effect, if any, appellant's actions had on her.

In her petition for an HRO, respondent listed the text messages sent by appellant under the section that asked her to describe the harassing conduct, and stated that she believes the harassment would continue. During the hearing, respondent also testified that she was concerned about how the disagreements with appellant were affecting her 14-year-

old daughter. We give deference to the district court's determination that respondent had an objectively reasonable belief that appellant's conduct had a substantial adverse effect on her safety, security, or privacy, and the record supports the district court's determination. *Kush*, 683 N.W.2d at 846.

Affirmed.