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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0245**

James Michael Olsen, petitioner,
Respondent,

Krisann Jeanne Olsen, petitioner,
Respondent,

vs.

James Robert Greger,
Appellant.

**Filed October 2, 2017
Affirmed
Johnson, Judge**

Washington County District Court
File No. 82-CV-16-3153

James M. Olsen and Krisann J. Olsen, White Bear Lake, Minnesota (pro se respondents)

James R. Greger, Little Canada, Minnesota (pro se appellant)

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Johnson,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge.

This appeal arises from a disagreement between neighbors concerning the boundary between their respective properties. The district court issued a harassment restraining order (HRO) that prohibits one party from harassing or contacting the other parties or being

present within five feet of their property. We conclude that the district court did not err by issuing the HRO and, therefore, affirm.

FACTS

James Michael Olsen and Krisann Jeanne Olsen live in the city of White Bear Lake. The father of James Robert Greger lives on an adjacent lot. The Olsens and Greger disagree about the location of the boundary separating the two properties, and their disagreements sometimes have escalated into heated arguments.

In July 2016, the Olsens petitioned the district court for an HRO. They alleged that Greger had harassed them on at least four occasions. The district court promptly issued an *ex parte* HRO. Greger requested a hearing on the petition. The district court conducted an evidentiary hearing in December 2016, at which all parties were represented by counsel.

At the evidentiary hearing, James Olsen and Krisann Olsen testified to each of the four incidents alleged in their petition. First, they testified that, in July 2013, Greger screamed at them, made derogatory comments about them, and called Krisann names. That incident occurred when James was spreading dirt on the Olsens' lawn in preparation for new sod and caused some dirt to go beyond the boundary onto Greger's father's property. Second, the Olsens testified that, in June or July 2015, Greger screamed at James because the Olsens' pontoon boat extended over the boundary, and Greger used his vehicle to push the boat toward the Olsens' property. Third, the Olsens testified that, in June 2016, Greger caused his riding lawn mower to propel rocks toward James, which resulted in cuts on James's leg and head and a bump on his head. Greger swore at Krisann after she saw James's injuries and confronted Greger. Fourth, the Olsens testified that, in July 2016,

Greger dug a trench on the Olsens' property while they were out of town and removed drain tile. A neighbor testified that he saw Greger digging up the tile, and Krisann testified that she saw a video-recording of Greger digging. With the assistance of the sheriff's office, the tile was found but in a damaged condition. After the Olsens completed their presentation of evidence, Greger moved for a directed verdict. The district court denied the motion.

Greger testified on his own behalf and called one additional witness to provide corroborative testimony. Greger testified that the Olsens are responsible for the disagreements between them and have behaved aggressively toward him. Greger testified that he moved the Olsens' pontoon boat because it inhibited his ability to do yardwork and because he wanted to avoid inconvenience to James. Greger also testified that he did not intend to injure James when using his riding lawn mower. Greger further testified that he removed the drain tile because it was buried on his father's property.

At the conclusion of the hearing, the district court made oral findings that validated the four allegations in the petition and the Olsens' testimony. One day later, the district court issued an order in which it granted the Olsens' petition and issued an HRO, which is effective for two years. The order also summarizes the oral findings that the district court made during the hearing.

D E C I S I O N

Greger argues that the district court erred by granting the Olsens' petition and issuing an HRO.

A district court may issue an HRO to require a “respondent to cease or avoid the harassment of another person” or “to have no contact with another person” if the court finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a), (b) (2016). “Harassment,” for purposes of an HRO, is defined by statute to require

- [1] a single incident of physical or sexual assault . . . or
- [2] 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) (2016). If a district court finds that a person has engaged in harassment, the district court “may issue” an HRO. Minn. Stat. § 609.748, subd. 5(b); *see also Eisenschenk v. Eisenschenk*, 668 N.W.2d 235, 242 n.5 (Minn. App. 2003) (stating that “may” is permissive), *review denied* (Minn. Nov. 25, 2003). This court applies a clear-error standard of review to a district court’s findings of fact concerning a petitioner’s allegations of harassment, *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004); a *de novo* standard of review to a district court’s conclusions of law, *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008); and an abuse-of-discretion standard of review to a district court’s decision to issue an HRO based on a finding that a person has engaged in harassment, *Witchell v. Witchell*, 606 N.W.2d 730, 731-32 (Minn. App. 2000).

Greger’s *pro se* brief focuses on the district court’s findings of fact. Greger contends, for example, that the Olsens offered “little to no corroborating evidence” of

harassment. Greger disputes the Olsens' evidence that James was injured by Greger's operation of his lawn mower and contends that, in any event, James was aware of the risk and did not object to his mowing. Greger also contends that he did not engage in wrongful conduct by digging up drain tile because it was on his father's property, not on the Olsens' property. He contends further that James consented to his pushing the pontoon boat away from his father's property.

In determining whether a district court's findings are clearly erroneous, we are mindful of the supreme court's guidance concerning the clear-error standard of review:

The standard of review that controls our examination of the district court's decision does not permit us to engage in fact-finding anew. *See Johnson v. Johnson*, 250 Minn. 282, 288, 84 N.W.2d 249, 254 (1957) ("It is not within the province of this court to determine issues of fact This is true even though this court might find the facts to be different if it had the factfinding function."); *see also Dunn v. Nat'l Beverage Corp.*, 745 N.W.2d 549, 555 (Minn. 2008) ("[A]ppellate courts may not 'sit as factfinders,' and are 'not empowered to make or modify findings of fact.'") (citations omitted)); *Butch Levy Plumbing & Heating, Inc. v. Sallblad*, 267 Minn. 283, 293, 126 N.W.2d 380, 387 (1964) ("It is not within the province of this court to make or amend findings of fact."). Rather, we review the district court's factual findings for clear error. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (reviewing district court's findings of fact in a MHRA claim for clear error). That is, we examine the record to see "[i]f there is reasonable evidence" in the record to support the court's findings. *Id.* And when determining whether a finding of fact is clearly erroneous, we view the evidence in the light most favorable to the verdict. *In re Stisser Grantor Trust*, 818 N.W.2d 495, 507 (Minn. 2012). To conclude that "[f]indings of fact . . . are clearly erroneous" we must be "'left with the definite and firm conviction that a mistake has been made.'" *Id.* (quoting *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999)). Our review of legal questions, however, is *de novo*.

LaMont v. Indep. Sch. Dist. No. 728, 814 N.W.2d 14, 18 (Minn. 2012).

Rasmussen v. Two Harbors Fish Co., 832 N.W.2d 790, 797 (Minn. 2013).

In applying that standard of review, we conclude that there is evidence in the record that supports each of the district court's findings. James and Krisann testified that Greger used his vehicle to push the pontoon boat off his father's property and that neither James nor Krisann consented. A neighbor of the Olsens testified about the pontoon-boat incident and the drain-tile incident. James testified about the incident in which Greger's lawn mower propelled rocks at him, causing him injuries. Krisann testified about the occasions when Greger yelled at her. Greger continues to dispute the Olsens' evidence. But we are not permitted to take a fresh look at the evidence and make our own determinations about credibility and weight; we are permitted only to determine whether the evidence is sufficient to support the district court's findings. *See id.* We conclude that the evidence introduced by the Olsens supports the district court's findings.

Greger's *pro se* brief does not explicitly challenge the district court's conclusions of law. We nonetheless note that, given its findings of fact, the district court properly characterized Greger's conduct as harassment. The lawn mower incident, by itself, may be considered "a single incident of physical . . . assault." *See* Minn. Stat. § 609.748, subd. 1(a)(1); *see also Peterson*, 755 N.W.2d at 762-63. In addition, the four incidents alleged in the petition and proved at the hearing are "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." *See* Minn.

Stat. § 609.748, subd. 1(a)(1); *see also Peterson*, 755 N.W.2d at 763-66. We further note that this case is similar to *Kush*, which also arose from a disagreement between neighbors concerning a boundary. 683 N.W.2d at 843. This court resolved that appeal by concluding that the record supported the district court's finding of harassment because one neighbor's "actions had, or were intended to have, a substantial adverse effect on the safety, security, or privacy" of the other neighbor. *Id.* at 844, 846.

Greger last contends that the district court erred by denying his mid-trial motion for a directed verdict, also known as a motion for judgment as a matter of law. *See Minn. R. Civ. P. 50.01.* Such a motion is permitted in a jury trial. The rule provides:

If during a trial *by jury* a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable *jury* to find for that party on that issue, the court may decide the issue against that party and may grant a motion for judgment as a matter of law against that party

Minn. R. Civ. P. 50.01(a) (emphasis added). The rule further provides that such a motion "may be made at any time before submission of the case to the *jury*." Minn. R. Civ. P. 50.01(b) (emphasis added). Because this appeal does not arise from a jury trial, there is no legal basis for Greger's contention that he was entitled to judgment as a matter of law after the Olsens' case-in-chief. In any event, we note that the Olsens introduced all of their evidence during their case-in-chief, which means that they had presented sufficient evidence of harassment before Greger's motion.

In sum, the district court did not err in its findings of fact, in its legal conclusions, or in its discretionary decision to issue an HRO.

Affirmed.