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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A17-0502**

Joseph Charles Adler, petitioner,  
Respondent,

vs.

Jennifer Lynn Adler,  
Appellant.

**Filed October 30, 2017  
Affirmed  
Reilly, Judge**

Anoka County District Court  
File No. 02-CV-17-484

Joseph Charles Adler, East Bethel, Minnesota (pro se respondent)

John G. Westrick, Westrick & McDowall-Nix, PLLP, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

**UNPUBLISHED OPINION**

**REILLY**, Judge

Appellant Jennifer Lynn Adler challenges the district court's grant of a harassment restraining order (HRO) in favor of respondent Joseph Charles Adler, arguing that (1) the record is insufficient to support the issuance of an HRO and (2) the HRO operates as an infringement on her First Amendment right to free speech. We affirm.

## DECISION

### I.

This appeal arises out of an order granting respondent's petition for an HRO against appellant under Minnesota Statutes section 609.748 (2016). We review a district court's decision to grant an HRO for an abuse of discretion and will reverse if the HRO is not supported by sufficient evidence or if the court improperly applied the law. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). "A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses." *Id.* at 843-44. "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) (quotation omitted). We review legal conclusions *de novo*. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

A court may issue an HRO if it finds "that there are reasonable grounds to believe that the [actor] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3). Harassment includes "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). A petitioner must prove 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 of 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).

Respondent petitioned for an HRO alleging that appellant sent harassing and intrusive text messages to him over a period of several months.<sup>1</sup> Following an evidentiary hearing, the district court granted the petition in respondent's favor, determining that appellant harassed respondent through a series of text messages sent on several different occasions. The district court determined that the text messages constituted harassing behavior, which was "designed to and did in fact have a substantial impact on Mr. Adler's privacy." The order restrained appellant from harassing respondent and from having any direct or indirect contact with him for a period of two years, except in certain parenting-related matters.

Sufficient evidence in the record supports the district court's order. The district court reviewed each text message and determined that, while some of the messages addressed parenting-time issues and were not harassing, "there are five that are nothing but harassing" and had a "substantial impact on Mr. Adler's privacy." By way of example, appellant sent text messages to respondent that he was "a very selfish and needy man," "a pansy," a "poor-minded f\*\*\*," and an "ignorant, desperate, selfish a\*\*hole." The district court concluded that each of these text messages constituted harassing behavior and that appellant's behavior was "designed to and did in fact" substantially impact respondent's privacy.

Appellant concedes that her text messages were "rude, antagonistic, and petulant," but claims that she did not intend to harass respondent. But the court did not find this

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<sup>1</sup> Appellant and respondent were previously married but divorced in 2009. They have children together.

statement credible, and we defer to the district court's opportunity to judge the credibility of the witnesses. *Kush*, 683 N.W.2d at 843-44. The record amply supports the district court's determination that there was objectively unreasonable conduct on the part of appellant, and that respondent had an objectively reasonable belief of a substantial adverse effect on his safety, security, or privacy. *Dunham*, 708 N.W.2d at 567. Because the district court's decision to grant an HRO in respondent's favor is supported by sufficient evidence, the district court properly applied the law, and we discern no abuse of discretion, we affirm.

## II.

Appellant argues that the HRO violates her First Amendment right to free speech. Appellant failed to raise her constitutional challenge to the district court and we decline to address it for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (declining to address issue not raised below); *see also* Minn. R. Civ. P. 5A (noting that, in civil actions, appellant is required to give notice of constitutional challenge to Attorney General to "afford the Attorney General an opportunity to intervene"); *Dunham*, 708 N.W.2d at 568 (observing that HRO matters are civil in nature, even though statute governing issuance of HRO is located in chapter containing criminal statutes). Accordingly, we decline to review the constitutionality of Minnesota Statutes section 609.748 because the issue was not properly raised in district court.

**Affirmed.**