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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1820**

Aaron Olson,
Appellant,

vs.

Cortney Nichole Mathis,
Respondent.

**Filed August 26, 2019
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CV-18-5058

Aaron Olson, Minneapolis, Minnesota (pro se appellant)

Cortney Nichole Mathis, Shakopee, Minnesota (pro se respondent)

Considered and decided by Cleary, Chief Judge; Reilly, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

After the district court adopted the referee's recommendation denying appellant Aaron Olson's petition for a harassment restraining order (HRO), Olson requested review by a district court judge. The district court dismissed the notice of review, finding that Olson failed to serve respondent Cortney Nichole Mathis and specify the grounds for

review. Now on appeal, Olson argues that the district court erred by denying the petition for an HRO and dismissing the notice of review. We affirm.

FACTS

In March 2018, Olson filed a petition for an HRO against Mathis. The district court denied his request for an ex parte HRO, but granted a hearing. The sheriff's office was unable to serve Mathis because she had moved, and Olson requested that she be served by publication. The district court granted the request. Mathis did not appear at the hearing, but the referee found that the facts alleged in the petition did not constitute a basis for an HRO and recommended that the district court dismiss the case. The district court initially adopted the recommendation. Olson, however, filed a notice of review by a district court judge under Minn. Stat. § 484.70 (2018), and the reviewing district court remanded to the referee after finding that the referee did not allow Olson to present any evidence at the hearing.

Olson testified at a second hearing, but he did not convince the referee that an HRO was necessary. The referee found that Olson was not a credible witness and that corroborating evidence was lacking. The referee also found that Olson's testimony regarding the alleged harassing incidents was vague and concluded that Olson did not carry his burden of showing that Mathis committed acts of harassment. The district court adopted the recommended findings and order.¹

¹ The referee's recommended findings and order became the district court's findings and order when the district court judge adopted the order. Minn. Stat. § 484.70, subd. 7(c).

Olson filed a notice of review by a district court judge. He listed the paragraphs of the referee's findings that he disputed, but claimed that he could not provide greater specificity until he had a copy of the hearing transcript. Soon after the matter was assigned, the district court ordered Olson to file proof that he had served Mathis with the notice of review. The district court also ordered him to file an amended notice of review specifying the grounds for review. It warned that failure to comply with either of these orders would result in dismissal of the notice of review.

In response, Olson filed an amended notice of review, claiming that he was seeking review for "the referee's abuse of discretion and clear error of fact." (Emphasis omitted). He added that the referee mischaracterized his testimony and that the transcript would show the mischaracterizations. He also stated that he had done everything in his power to serve Mathis but she was evading service. Olson argued that because he served the petition by publication and the district court did not require that he serve Mathis for his first review, he should not have to serve Mathis for the second review. The district court dismissed the notice of review, finding that Olson's amended notice contained no additional clarification and that Olson did not serve Mathis with the notice of review. It reasoned that, under Minn. Stat. § 484.70, Olson was not excused from the service requirement simply because Mathis was served the initial petition by publication. Olson appeals, arguing that the district court erred in dismissing the notice of review and denying the HRO petition.

D E C I S I O N

A party may request that a judge review a referee's recommended order under Minn. Stat. § 484.70, subd. 7(d). In order to obtain review, a party must serve and file notice

within ten days of effective notice of the recommended order. Minn. Stat. § 484.70, subd. 7(d). “When periods for serving and filing notices of appeal or review are specified in statute or rule, courts will construe those provisions strictly.” *Sanders v. Boughton*, 404 N.W.2d 916, 918 (Minn. App. 1987). Failure to both serve and file the notice of review within the time provided by the statute deprives the district court of jurisdiction to review the referee’s order. *See id.* (citing *Blixt v. Civil Serv. Bd.*, 210 N.W.2d 230, 231 (Minn. 1973)), (concluding that the district court lacked jurisdiction to modify a child-support order issued by a referee when the challenger failed to file and serve notice of review as required by statute). “Jurisdiction is a question of law that we review de novo.” *In re Comm’r of Pub. Safety*, 735 N.W.2d 706, 710 (Minn. 2007) (quotation omitted).

The district court did not err in dismissing the notice of review. It is uncontested that Olson failed to serve Mathis, and he does not argue that the statute does not require service. He instead asserts that there is an exception to the general rule requiring service when the respondent has been served by publication, the respondent has failed to appear, and respondent’s whereabouts are unknown. It appears that Olson believes he should be excused from serving Mathis because of the unlikelihood that service would be successful. He fails, however, to cite to any authority that creates such an exception. Because Olson did not serve Mathis, the district court lacked jurisdiction to review the referee’s order.

Next, Olson challenges the district court’s decision dismissing the petition because he failed to demonstrate that Mathis engaged in harassment. Before a court grants an HRO, it must find that there are reasonable grounds to believe that the respondent has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3) (2018). We review a district court’s

decision on whether to grant an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

Here, Olson presented his testimony and a police incident report as evidence that Mathis was harassing him. The district court found that Olson was not a credible witness, explaining that his testimony was vague and that he had difficulty answering the court's questions. The district court concluded that Olson's claims could not be accepted as true without corroborating evidence. This court defers to the district court's credibility determination. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). And, as the district court found, Olson failed to present any corroborating evidence. The only document Olson introduced at the hearing was a police incident report. But this report only shows that Olson reported to the police that he thought Mathis broke into his house. It does not contain any other details regarding this alleged incident or any evidence that Mathis actually broke into Olson's home. The district court did not abuse its discretion in denying the HRO.

Affirmed.