STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0466
A19-0468

Staples-Motley School District,
Respondent (A19-0466),

Paul David Anderson,
Respondent (A19-0468),

vs.

Dave Johnson, a/k/a David Kenneth Johnson,
Appellant.

Filed November 18, 2019
Reversed
Larkin, Judge

Todd County District Court
File Nos. 77-CV-19-27, 77-CV-19-57

Staples-Motley School District, Staples, Minnesota (respondent)

Paul Anderson, Staples, Minnesota (pro se respondent)

Samuel J. Edmunds, Sieben Edmunds Miller PLLC, Mendota Heights, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reyes, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges the district court's issuance of harassment restraining orders (HROs) on behalf of respondents. He argues that the district court did not hold a hearing as required by statute, that the evidence does not support the district court's findings of fact, and that the district court's findings do not satisfy the statutory definition of harassment. We reverse.

FACTS

In January 2019, respondent Staples-Motley School District and respondent Paul Anderson filed petitions for HROs against appellant David Kenneth Johnson. The petitions alleged that Johnson had made verbal threats and uninvited visits and had stalked various members of the community after his divorce proceedings. The school district alleged that Johnson claimed to have a "hit list" of numerous people affiliated with the district and access to weapons. It requested that Johnson be excluded from all school sites and activities. Anderson alleged that Johnson had stalked him by repeatedly passing by his house and by making multiple threats, including that Anderson was "on his list."

The district court issued ex parte temporary restraining orders on behalf of the school district and Anderson. On January 22, 2019, the district court commenced a hearing on the HRO petitions. The school district did not call any witnesses or offer any exhibits in support of its petition. Instead, the school principal offered unsworn remarks in support of the school district's petition. He explained that "[t]he nature of the threats . . . were brought forth by one of our school employees," "there were specific people that were stated

by Mr. Johnson to this individual," "[t]he nature of his threats and how he went about them were public," "he was very escalated in his behaviors," "[s]ome of the things that he said were very concerning," and "it's just not someone we want on our campus."

In support of his HRO petition, Anderson testified as follows:

> Um, I talked to the gentleman directly, the employee, of Staples-Motley High School that filed the police report. And he said to me with embarrass[ment]—he was shocked that he was going to have to tell me that I was on the list, and he gave off three other names; and to protect them I will not give them.
>
> But I, Paul Anderson, was listed as one of the people that Mr. Johnson said that night in the Burger King that he would knock off. And the quote was, "I have access to weapons, I know how to use them, and I have a list of people."

The district court granted HROs against Johnson on behalf of the school district and Anderson. In the school district's case, the district court found that Johnson "intentionally contacts school staff despite request not to do so" and "shows up at school [and] school activities despite request not to do so." In Anderson's case, the district court found that Johnson repeatedly passed by Anderson's home and that he "made threats to" Anderson in August 2017. However, the district court acknowledged that it was "without sufficient evidence to make any specific findings regarding the alleged threats" by Johnson, that "[n]one of the parties presented any witnesses who could offer up firsthand information of the reported threats," and that "no one presented any document which substantiated the allegation." The district court also noted that it was "struggling to sort out fact from rumor or hearsay." Nevertheless, the district court issued the HROs "on a limited basis to provide a cooling off period" and ordered that the HROs would expire on August 1, 2019.

Johnson appealed the district court's grant of the HROs, and this court consolidated the appeals.[1]

D E C I S I O N

The district court may issue an HRO if, among other things, it "finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2018). Harassment includes, among other things:

> [A] single incident of physical or sexual assault, a single incident of stalking . . . 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, regardless of the relationship between the actor and the intended target[.]

Id., subd. 1(a)(1) (2018).

We review the district court's issuance of an HRO for an abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000). In doing so, we review the district court's findings of fact for clear error and give due regard to the district court's opportunity to judge the credibility of witnesses. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We reverse the issuance of a restraining order if it is "not supported by sufficient evidence." *Id.* at 844.

As to the school district's HRO, Johnson argues that the district court did not hold a "hearing" as defined in section 609.748 because the school district did not offer any

[1] Neither respondent filed a brief. This court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

witness testimony or exhibits. We have held that a "hearing" under section 609.748 requires testimony and documents properly admitted as evidence. *Anderson v. Lake*, 536 N.W.2d 909, 911-12 (Minn. App. 1995). That interpretation of "hearing" was based on a previous interpretation of the phrase "full hearing" in the Minnesota Domestic Abuse Act, which regarded an order for protection. *Id.* at 911 (citing *El Nashaar v. El Nashaar*, 529 N.W.2d 13, 14 (Minn. App. 1995)). Although the language in the Domestic Abuse Act has since changed from "full hearing" to "hearing," *see Oberg v. Bradley*, 868 N.W.2d 62, 65 (Minn. App. 2015), the relevant language in section 609.748 has remained the same. In sum, the district court must base an HRO on testimony and documents properly admitted as evidence. The district court therefore abused its discretion by issuing the HRO on behalf of the school district based solely on unsworn oral remarks.

Even if the principal's remarks had been presented as sworn testimony, they would not have supported the court's findings in the school district's case. The district court found that Johnson "followed, pursued or stalked the Petitioner(s)" by "intentionally contact[ing] school staff despite request not to do so" and that he "made uninvited visits to the Petitioner(s)" by "show[ing] up at school [and] school activities despite request not to do so." But at the hearing, the principal did not state that Johnson intentionally contacted school staff, or showed up at the school and school activities, despite requests not to do so. Instead, the principal informed the district court that Johnson made public threats, which caused members of the community to feel uncomfortable with his presence. Thus, the HRO on behalf of the school district is not supported by sufficient evidence.

As to Anderson's HRO, Johnson argues that the evidence was insufficient to support the HRO. Anderson testified in support of his petition that he had heard, from another employee of the school, that "I, Paul Anderson, was listed as one of the people that Mr. Johnson said that night in the Burger King that he would knock off. And the quote was, 'I have access to weapons, I know how to use them, and I have a list of people.'"

Johnson argues that Anderson's testimony was inadmissible hearsay and that the district court erred by allowing it. *See* Minn. R. Evid. 801(c) ("'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); Minn. R. Evid. 802 ("Hearsay is not admissible except as provided by these rules or by other rules prescribed by the Supreme Court or by the Legislature.").

We need not determine whether the district court erred by admitting Anderson's testimony because that testimony does not support the district court's determination that harassment occurred. *See* Minn. R. Civ. P. 61 ("The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."). The district court found that Johnson "followed, pursued or stalked" Anderson by "repeatedly passing by [Anderson's] home" and "made threats to [Anderson] as follows: August, 2017, [Johnson] threatened [Anderson]." But Anderson did not testify that Johnson repeatedly passed by Anderson's home. Moreover, one verbal threat does not satisfy the statutory definition of harassment. *See* Minn. Stat. § 609.748, subd. 1(a)(1); *see also Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004) ("Because the district court identified only one incident of harassment, the findings are insufficient to support [an

HRO.]"). Because Anderson's testimony does not establish that Johnson engaged in harassment as defined in Minn. Stat. § 609.748, subd. 1(a)(1), the HRO on behalf of Anderson is not supported by sufficient evidence.

In conclusion, because neither of the HROs is supported by sufficient evidence, we reverse.

Reversed.