STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1647

Sharon McCrea,
Respondent,

vs.

Eric Maurice Smith,
Appellant.

Filed September 8, 2020
Affirmed
Reilly, Judge

Ramsey County District Court
File No. 62-HR-CV-19-147

Sharon McCrea, St. Paul, Minnesota (pro se respondent)

Lisa L. Peralta, Peralta Appellate Law PLLP, St. Louis Park, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Segal, Chief Judge; and Reilly, Judge.

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

REILLY, Judge

On appeal from the district court's grant of a harassment restraining order (HRO), appellant argues that the record does not support the grant of the HRO because (1) the district court erred in ruling that appellant had no right to reside in the home; (2) he did not

refuse multiple requests to move out of the home; and (3) his conduct does not constitute harassing behavior. We affirm.

FACTS

Respondent Sharon McCrea petitioned the district court for an order for protection (OFP) against appellant Eric Maurice Smith, alleging physical abuse. In the alternative, McCrea requested that the district court impose an HRO. In February 2019, the district court held an evidentiary hearing. At the hearing, McCrea and Smith both testified. The testimony at the hearing provides these facts.

Smith had lived at McCrea's home in Philadelphia for a while when he was a child. Many years later, Smith was "riding on the sub" in Philadelphia when he saw McCrea's brother. McCrea's brother gave McCrea's telephone number to Smith and Smith called McCrea. McCrea told Smith that she wanted him to come to Minnesota because it is "[s]o much better than Philadelphia." McCrea owns her own home in Minnesota and has lived here for 19 years. Smith came to Minnesota and stayed with McCrea for a while, but decided to move back to Philadelphia when he and McCrea began "bump[ing] heads too much." Smith stayed in Philadelphia for six to eight months, but kept in touch with McCrea.

Smith eventually moved back to Minnesota with his children and again lived with McCrea from December 2017 until February 1, 2019. While he lived with McCrea, Smith paid $300 per month in rent and helped with bills, but he never signed a written lease with McCrea. Things were "chaotic[] with [Smith] and [McCrea]" and they kept "bumpin'

heads." But Smith decided he would not move back to Philadelphia and that he would stay with McCrea until he found his own apartment in Minnesota.

McCrea testified that in January 2019, Smith "pushe[d] [her] to the side" which caused her pain in her shoulder and upper arm and left bruises above her elbows. She explained that this had happened on "[m]ore than one occasion" and that Smith had "threatened to kick [her] a--." McCrea said that Smith had forced his way into her room several times and that this would happen at "any given moment." McCrea asked Smith to leave her home "[m]any times" but Smith "told [her] he ain't leaving 'til he get another place." McCrea explained that she is "afraid of [Smith]" and "very scared of [Smith's] demeanor about himself."

Smith testified that on one occasion, McCrea told him he had to leave, but he had already paid rent. He explained that he would not leave until he found a place. Smith said that he had found an apartment that required a "security and a pre-lease deposit," so he told McCrea that he would only be able to pay her $200 that month, which she accepted. However, after he paid her the money, there were problems between the two of them and McCrea tried hitting him on one occasion when they were in the laundry room.

Smith denied being violent with McCrea, pushing her, threatening her, or yelling at her. Smith agreed that McCrea asked him "multiple times" to leave her home, but he did not leave until the district court issued its order.

Following the evidentiary hearing, the district court denied McCrea's request for an OFP. The district court explained that it could not reach the "preponderance of evidence" standard for domestic abuse because there was testimony, "both that it happened and that

it didn't happen. And . . . I don't find one more credible than [the other]." But the district court granted an HRO prohibiting Smith from having "direct or indirect contact" with McCrea and prohibiting Smith from "being within two (2) city blocks or one quarter (1/4) mile" of McCrea's home. The district court determined that "[t]here [were] reasonable grounds to believe that [Smith] has engaged in harassment of [McCrea]" by "refus[ing] repeated request[s] to leave [McCrea's] home in which [Smith] has no legal right to reside." The district court also determined that the "harassment has, or is intended to have, a substantial adverse effect on [McCrea's] safety, security, or privacy." This appeal follows.

D E C I S I O N

Harassment is defined as "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) (2018). "A court may grant a harassment restraining order when the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment." *Kush v. Mathison,* 683 N.W.2d 841, 844 (Minn. App. 2004) (quotation omitted), *review denied* (Minn. Sept. 29, 2004). This court reviews a district court's issuance of an HRO for an abuse of discretion. *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002). "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." *Kush,* 683 N.W.2d at 843-44. Appellate courts will reverse the issuance of an HRO if it is not supported by sufficient evidence. *Id*. at 844.

I. Smith has not established that the district court erred when it ruled that Smith had no legal right to reside in McCrea's home.

Smith argues that the district court abused its discretion in issuing the HRO because the "district court misapplied the law in determining that Smith had no right to reside [in McCrea's home]." Smith contends that he was a tenant at will under an oral agreement and had never been given proper written notice of termination of the lease as required under Minn. Stat. § 504B.135(a). As a result, he had a "right to reside in the house until McCrea served him with proper written notice of termination of the lease" and "[a]ny and all oral requests or demands of McCrea that Smith move out were not valid terminations of the lease."

"Tenancies at will may be created by express words, or they may arise by implication of law." *Thompson v. Baxter*, 107 Minn. 122, 123, 119 N.W. 797, 797 (1909). When a tenancy at will is created by express contract, the contract will specify as such and the lease will provide "that the tenant shall occupy the premises so long as agreeable to both parties." *Id*. A tenancy at will may "arise by implication of law where no definite time is stated in the contract, or where the tenant enters into possession under an agreement to execute a contract for a specific term and he subsequently refuses to do so, or one who enters under a void lease, or where he holds over pending negotiations for a new lease." *Id*. at 124, 119 N.W. at 798. The "chief characteristics" of this form of tenancy are: "(1) uncertainty respecting the term, and (2) the right of either party to terminate it by proper notice." *Id*. "A tenancy at will may be terminated by either party by giving notice

in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less." Minn. Stat. § 504B.135(a).

Smith asserts, without citing legal authority or providing legal analysis, that he was a tenant at will under an oral agreement and that McCrea did not give him proper notice to terminate his lease. *See Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). Nonetheless, we will analyze his argument.

Smith appears to contend that the tenancy-at-will agreement was expressly created. On this record, we are not persuaded. Smith points to these facts to support his assertion that he was a tenant at will and that he and McCrea had orally agreed to such a tenancy. First, he lived in McCrea's home with his children from December 2017 until February 2019. Second, Smith paid McCrea $300 in rent every month. And third, McCrea did not have Smith sign a written lease because she did not want it to impact her welfare benefits. While these facts are supported by the record, they are the *only* facts in the record about any sort of agreement or lease that may have been in place between the parties. On these facts alone, we are not persuaded that a tenancy at will was created by "express contract" as Smith appears to contend it was, given that there is no evidence in the record that McCrea and Smith expressly agreed to a tenancy-at-will arrangement. And Smith does not argue, or cite any legal authority to support an argument, that the tenancy at will arose by "implication of law." Thus, we reject Smith's argument. Smith has not established that

the district court misapplied the law when it ruled that Smith had no legal right to reside in McCrea's home.

II. The record supports the district court's finding that McCrea made repeated requests that Smith leave her home and that Smith repeatedly refused.

Smith contends that McCrea failed to submit sufficient evidence to support the district court's finding that she repeatedly asked Smith to leave her home.

Smith appears to argue that the evidence offered by McCrea was unreliable and that the evidence was insufficient because McCrea's testimony lacked specificity. But "[c]redibility determinations are the province of the trier of fact," and the district court seems to have accepted McCrea's testimony as credible. *Peterson v. Johnson*, 755 N.W.2d 758, 763 (Minn. App. 2008). And this court has noted that "lack of specificity is not fatal to the district court's findings." *Kush*, 683 N.W.2d at 844 (citing *Davidson v. Webb*, 535 N.W.2d 822, 823-24 (Minn. App. 1995)).

While Smith concedes that "there was a hint of evidence" that McCrea asked him to leave more than once, he argues that this evidence was insufficient to sustain the district court's findings. We disagree.

McCrea testified that she asked Smith to leave her home "many times" and he told her "he ain't leaving 'til he get another place." Later, McCrea was questioned about whether she asked Smith to leave her home. She responded, "[s]everal times." McCrea was then asked if Smith refused to leave until McCrea got an ex parte order,[1] to which

[1] At the hearing, McCrea indicated that she currently had an ex-parte OFP in place against Smith. While we do not have any evidence of this order in the record on appeal, it appears that this portion of her testimony refers to this ex parte OFP.

McCrea responded, "[n]o. Until he got his apartment. He said his apartment would be ready within two weeks. Two weeks came and gone."

Smith provided contradictory testimony. He said that once, McCrea asked him to leave but he did not because he had already paid her rent and told her that he would not leave until he found a new place. But Smith also testified that McCrea asked him to leave on multiple occasions and that he did not leave McCrea's home until the district court issued the ex parte order. The record supports the district court's finding that McCrea asked Smith to leave on multiple occasions.

Smith relies on *Staples-Motley Sch. Dist. v. Johnson*, Nos. A19-0466, A19-0468, 2019 WL 6112444, at *1 (Minn. App. Nov. 18, 2019), an unpublished opinion of this court that Smith acknowledges is not precedential. And we note that *Staples-Motley* is distinguishable.

In *Staples-Motley*, this court reversed the district court's issuance of an HRO because the testimony at the hearing did not support the district court's findings. *Id*. at *3. The Staples-Motley school district and another individual, Paul Anderson, brought petitions for HROs against David Kenneth Johnson. *Id*. at *1. The district court granted both petitions. *Id*. In the school district's case, the district court found that Johnson had "followed, pursued or stalked the Petitioner(s) by intentionally contact[ing] school staff despite request[s] not to do so" and also that Johnson "made uninvited visits to the Petitioner(s) by show[ing] up at school [and] school activities despite request[s] not to do so." *Id*. at *2 (quotations omitted). But this court determined that at the hearing, the principal never stated that "Johnson intentionally contacted school staff, or showed up at

the school and school activities, despite requests not to do so. Instead, the school district representative informed the district court that Johnson made public threats, which caused members of the community to feel uncomfortable with his presence." *Id.* Thus, this court concluded that there was insufficient evidence to support the HRO. *Id.* Likewise, as for Anderson's case, this court concluded that the HRO was not supported by sufficient evidence. *Id.* The district court found that "Johnson 'followed, pursued or stalked' Anderson by 'repeatedly passing by [Anderson's] home' and 'made threats to [Anderson].'" *Id.* at *3. But this court determined that Anderson did not testify that Johnson had repeatedly passed by his home. *Id.*

Smith argues that, like *Staples-Motley*, "the district court's finding [is unsupported by] sufficient testimony by the petitioner to support an HRO based on refusing repeated requests to move." But unlike *Staples-Motley*, where there was no testimony to support the district court's findings, there was testimony here that supports the district court's findings. As detailed above, McCrea testified that she had asked Smith to leave her home many times but Smith told her he would not leave until he found another place to live. Smith also testified that McCrea asked him to move out of her home multiple times, but he did not move out.

The record supports the district court's findings that McCrea made repeated requests that Smith leave her home and that Smith repeatedly refused to leave.

III. The district court did not abuse its discretion in issuing the HRO on the ground that Smith engaged in harassing behavior.

Smith argues that the district court abused its discretion in issuing the HRO because there was insufficient evidence that he engaged in harassing behavior. The district court determined that "[t]here are reasonable grounds to believe that [Smith] has engaged in harassment of [McCrea]" and that "[t]he harassment has, or is intended to have, a substantial adverse effect on [McCrea's] safety, security, or privacy."

The harassment statute requires "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). "The statute requires proof of, first, objectively unreasonable conduct or intent on the part of the harasser, and, second, an objectively reasonable belief on the part of the person subject to harassing conduct." *Peterson*, 755 N.W.2d at 764 (quotations and internal citations omitted). "The determination of whether certain conduct constitutes harassment may be judged from both an objective standard, when assessing the effect the conduct has on the typical victim, and a subjective standard, to the extent the court may determine the harasser's intent." *Kush*, 683 N.W.2d at 845.

Smith first argues that the record does not support a finding that Smith intended to harass McCrea when he refused to move out of her home. The district court did not make any specific findings to support a conclusion that Smith had the intent to harass McCrea. From our review of the record, Smith's failure to move out when asked to do so by McCrea

was due to Smith's inability to find different housing for himself and his children. There is no evidence in the record to support a finding that Smith intended to harass McCrea by refusing to move out of her home.

Smith also argues that the evidence is insufficient to establish that Smith's conduct was objectively unreasonable and that McCrea, as the person subject to the harassing conduct, did not have an "objectively reasonable belief" of harassment. Smith contends that the fact that he did not move out right away when asked to do so does not constitute objectively unreasonable conduct. He also asserts that this court cannot consider McCrea's allegations of abuse because the district court dismissed McCrea's request for an OFP due to insufficient evidence of abuse, nor can this court consider McCrea's allegations that Smith threatened her because the district court did not "make a finding of threats as a basis for the HRO."

Smith is correct that the district court rejected McCrea's claims of physical abuse when it denied McCrea's request for an OFP. The district court explained that it could not reach "the preponderance of the evidence" standard for domestic abuse because there was testimony, "both that it happened and that it didn't happen. And . . . I don't find one more credible than [the other]."

But the district court heard testimony from both Smith and McCrea about the atmosphere in the home, which Smith described as "chaotic[]" and involved a lot of "bumpin' heads" with McCrea.

McCrea echoed Smith's testimony with her various allegations about Smith's behaviors while in her home. McCrea testified that Smith pushed her, causing her pain in

her shoulder and upper arm and leaving bruises above her elbows. She explained that this had happened more than once. She also said that Smith had "threatened to kick [her] a--" and that Smith had forced his way into her room several times and that this would happen at "any given moment." McCrea asked Smith to leave her home "[m]any times" but Smith "told [her] he ain't leaving 'til he get another place."

And McCrea explained that she is "afraid of [Smith]" and "very scared of [Smith's] demeanor about himself." McCrea testified that she was afraid that if the court did not grant her request for an OFP (or HRO) that Smith would "destroy something." When asked if she just wanted to live peacefully in her home, McCrea responded, "Yes!"

This testimony provides context for why Smith's repeated refusals to leave McCrea's home were objectively unreasonable under the circumstances of this case and why McCrea had an objectively reasonable belief about Smith's harassing conduct.[2] The testimony supports the district court's determination that there were repeated incidents of intrusive or unwanted acts, words, or gestures that had a substantial adverse effect on McCrea. We thus conclude that the district court did not abuse its discretion in issuing the HRO.

Affirmed.

[2] We also note that "even lesser levels of conduct may still support an order when calculated to harass a fragile person." *Kush*, 683 N.W.2d at 845. In this case Smith understood that McCrea suffered from Alzheimer's and McCrea testified that she is a "battered woman."