STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1904

Annikki Lee Hockert,
Respondent,

vs.

Andrew John Towle,
Appellant.

Filed June 22, 2020
Affirmed
Reilly, Judge

Anoka County District Court
File No. 02-CV-19-6315

Annikki L. Hockert, Blaine, Minnesota (pro se respondent)

Francis H. White, III, Francis White Law, PLLC, Woodbury, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

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

REILLY, Judge

Appellant challenges the district court's decision to grant respondent's petition for a harassment restraining order (HRO), arguing that (1) the record does not support the district court's determination that appellant engaged in more than one instance of intrusive

or unwanted conduct, and (2) the district court improperly relied on hearsay evidence stricken from the record. We affirm.

FACTS

Appellant Andrew John Towle and respondent Annikki Lee Hockert were in a two-year romantic relationship, which ended in 2008. After the relationship ended, Hockert petitioned for an HRO against Towle. The district court granted the HRO in May 2008 ordering Towle to "have no direct[,] indirect, or [third] party contact with [Hockert] which includes mail, telephone, internet and text messaging." The HRO was effective for six months and expired in December 2008.

About one or two years ago, Hockert saw Towle at a Walmart store. Hockert believed that Towle followed her around the store.[1] Hockert testified that it "appeared that [Towle] was looking for [her]." Hockert hid in the clothing department and ran out of the store when Towle's back was turned.

In November 2019, Hockert hosted a benefit to raise money for her medical expenses. Hockert posted information about the benefit on her social media account. She did not invite Towle or any of his family members to attend the benefit. Towle's sister arrived at the benefit, despite not having been invited. Hockert told Towle's sister to leave the event and also stated that she did not want Towle to come to the benefit. Towle's sister left about five minutes after she arrived. Around an hour and a half later, Towle arrived uninvited to Hockert's benefit. Hockert ran into another room to avoid Towle, and asked

[1] These facts are based on testimony taken at the contested HRO hearing.

a friend to tell her father to instruct Towle to leave. Hockert also called the police. The police arrived and spoke with Towle in the parking lot for about half an hour.

Towle testified that he learned about the benefit after searching for Hockert on her social media accounts. Towle stated that he went to the benefit to "be there in support" of Hockert and did not speak with her at the event. Towle acknowledged that neither Hockert, nor any of her friends or family members, invited him to the event. Towle left a handwritten note for Hockert in a guest book, along with a flash drive containing pictures and videos of Towle and Hockert during their relationship. Towle stated in his note that he was "praying for [her]" in his Bible-study group at his church. Hockert testified that she was alarmed by Towle's reference to the church, because she also attends one of the church campuses and does not feel safe going to the same church. Towle testified that he had never seen Hockert at church but that, if he had seen her, he "would've left."

After the benefit, Hockert filed a petition seeking a 50-year HRO against Towle. The district court held a hearing at which both parties testified. The parties did not call any witnesses. Following the hearing, the district court determined that Hockert was entitled to a two-year HRO against Towle. The district court determined that there were reasonable grounds to believe that Towle engaged in harassment of Hockert because he attempted to contact her in a store and attended a benefit to which he had not been invited. Towle appeals.

D E C I S I O N

I. Standard of Review

We review a district court's issuance of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). We will not disturb a district court's factual findings underlying an HRO unless they are clearly erroneous, and we defer to the district court's discretion in determining whether the facts establish reasonable grounds to believe the respondent engaged in harassment. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We also give "due regard" to the "district court's opportunity to judge the credibility of witnesses." *Id.* Questions of law are reviewed de novo. *Peterson*, 755 N.W.2d at 761.

II. The district court did not abuse its discretion by issuing an HRO.

A district court may issue an HRO if it determines "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 "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). "[S]ection 609.748 requires both objectively unreasonable conduct or intent on the part of the harasser and an objectively reasonable belief on the part of the person subject to harassing conduct." *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

The district court determined that there were two incidents of harassing conduct by Towle. The district court found that Towle harassed Hockert by following her in a store and "requiring [her] to hide from him before sneaking out." The district court also determined that Towle attended a benefit for Hockert, despite not having been invited, and that Hockert had to "hid[e] in a bathroom . . . until the police arrived." Hockert testified that Towle's actions caused her to suffer from "severe PTSD," and that she has "gone through a lot of therapy over the years due to everything that [Towle] had caused [her]." Based on the evidence in the record and the testimony presented at the hearing, the district court determined that "[t]he harassment has or is intended to have a substantial adverse effect on [Hockert's] safety, security, or privacy," and that Towle's actions had "a substantial adverse effect on [Hockert's] safety, security, or privacy." The record supports the district court's determination that Towle's appearance at the store and at the benefit qualify as incidents of harassment under Minn. Stat. § 609.748, subd. 1(a).

a. There were repeated incidents of intrusive or unwanted acts.

Towle argues that the evidence does not support the district court's determination that there were repeated incidents of harassing conduct. A single incident of "intrusive or unwanted acts, words, or gestures" does not satisfy the statutory definition of harassment. Minn. Stat. § 609.748, subd. 1(a)(1); *see also Peterson*, 755 N.W.2d at 766 ("One incident of an intrusive or unwanted act is insufficient to prove harassment if there is no infliction of bodily harm or attempt to inflict bodily harm."). Two or more instances of harassing conduct constitute "repeated incidents." *Kush*, 683 N.W.2d at 844.

Towle argues that there were not multiple incidents of harassing conduct because he did not see Hockert at Walmart one to two years ago, and he did not harass Hockert by showing up uninvited to her benefit. Towle argued that he believed Hockert would "welcome contact with him." Towle testified that Hockert sent a message to Towle's mother in 2015, stating that she forgave Towle for his earlier actions and would have contacted Towle directly if she could locate him. Towle interpreted this message to mean that Hockert "would not regard additional communication as unwelcome, much less harassing."

The district court was presented with the petition, testimony from both Hockert and Towle, and other evidence concerning harassing conduct, and found Hockert's testimony of unwanted contact to be more credible and persuasive than Towle's testimony. The district court did not find Towle's statements credible. The district court credited Hockert's statement that Towle was "looking for [her]" in a Walmart store, and that she hid in a clothing department to avoid him. The district court also noted that Towle attended a benefit for Hockert, that "she did not want him there," and that the court "found [Hockert's] testimony credible regarding this incident." And it is not the role of this court to find facts on appeal or to reweigh the evidence presented by the parties. *See Rainforest Cafe, Inc. v. State of Wisc. Inv. Bd.*, 677 N.W.2d 443, 452 (Minn. App. 2004) ("The role of the court of appeals is to correct errors, not to find facts."); *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (cautioning that reviewing court exceeds its scope of review if it "usurp[s] the role of the [district] court by reweighing the evidence and finding its own facts"). We also give "due regard . . . to the district court's opportunity to determine the

credibility of witnesses." *Kush*, 683 N.W.2d at 845. Given the district court's determination that Towle engaged in harassment on two separate occasions, and giving "due regard" to the district court's credibility assessments, we hold that the record supports a determination that Towle engaged in repeated incidents of harassing conduct toward Hockert.

b. The district court's implicit findings are supported by the record.

Towle argues that the district court erred by relying on inadmissible hearsay evidence. 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. 801(c). The rules of evidence bar the admission of hearsay evidence unless an exception to the rule against hearsay applies. Minn. R. Evid. 802.

Hockert and Towle both testified at the hearing. They called no other witnesses. Hockert testified that Towle attended her benefit after being notified that his presence was unwanted, and that he refused to leave until the police arrived. Hockert testified that she told Towle's sister that she did not want Towle to attend the benefit. After he arrived, Hockert told her friends to tell her father to instruct Towle to leave. Hockert tried to testify about what Towle's sister, Hockert's friends, and Hockert's father said to Hockert in response. Towle objected to these statements on hearsay grounds and the district court sustained these objections.

On appeal, Towle argues that the district court relied on these statements in determining that Towle harassed Hockert, even though it sustained his hearsay objections. We do not agree. Nonhearsay evidence in the record supports the district court's inference

that Towle knew he was not welcome at the event. The record shows that Towle has a history of harassing behavior toward Hockert, including behavior resulting in a previous HRO. Hockert testified that she did not invite Towle or any members of his family to attend the event. Towle acknowledged that he had not been invited to the benefit, and testified that he learned about it only because he sought out information about Hockert on her social media accounts. Hockert testified that she told Towle's sister to tell Towle not to come. Towle stated that he did not try to speak to Hockert at the benefit, and intended to leave without speaking to her. Towle's own testimony further acknowledges that he knew Hockert did not want to communicate with him. As an example, Towle testified that he attends the same church that Hockert attends. Towle stated that he has never seen Hockert at the church campus he attends. When asked what he would have done if he saw her at church, Towle stated, "I would've left."

The district court made a reasonable inference from the evidence that Towle arrived at the benefit knowing that his presence was unwelcome. Towle conceded that no one invited him to the event, and he only learned about it by seeking out information about Hockert on her social media account. The district court reasonably inferred that Towle knew his presence was unwelcome—particularly because of the earlier HRO—and attended the benefit anyway. From this evidence, the district court found that Towle's actions were "intrusive or unwanted," constituting harassment. Minn. Stat. § 609.748, subds. 1(a)(1), 5(b)(3). We will not reweigh this evidence on appeal. *See Fogarty v. Martin Hotel Co.*, 101 N.W.2d 601, 605 (Minn. 1960) ("Where reasonable minds might reach different conclusions based upon inferences which may reasonably be drawn from

the evidence, the determination of the factfinder is conclusive."). The district court did not erroneously rely on hearsay in making its determination that Towle engaged in harassment. We therefore conclude that the district court did not abuse its discretion in determining that the requirements for an HRO were satisfied.

Affirmed.