STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1955

Sandra May Schumann,
Respondent,

vs.

Dana Scott Wiberg,
Appellant.

Filed December 21, 2020
Affirmed
Jesson, Judge

Dakota County District Court
File No. 19WS-CV-19-1007

Sandra May Schumann, Eagan, Minnesota (pro se respondent)

Dana Scott Wiberg, Inver Grove Heights, Minnesota (pro se appellant)

Considered and decided by Jesson, Presiding Judge; Cochran, Judge; and Slieter, Judge.

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

JESSON, Judge

Sandra Schumann obtained a 50-year harassment restraining order for herself and a one-year harassment restraining order for her daughter against Dana Wiberg, her daughter's father. Wiberg appeals the decision on two primary grounds, arguing that there

was insufficient evidence to justify the harassment restraining orders and that the court impermissibly denied the admission of certain evidence. We affirm.

FACTS

In 2018, respondent Sandra Schumann filed for a two-year harassment restraining order (HRO) against appellant, Dana Wiberg, on behalf of their daughter and a 50-year HRO against Wiberg for herself.[1] The district court held a hearing on the petition, during which it received testimony from both parties and admitted four exhibits into evidence.

At the hearing, Schumann testified that a two-year HRO for daughter was necessary because Wiberg posted—and continued to post—about daughter's mental health on social media. The posts were made in violation of Dakota County Social Services' instructions and a family court order prohibiting Wiberg from doing so. Schumann testified that the HRO was also necessary because of inappropriate texts Wiberg sent to daughter. According to Schuman, the texts told daughter "that she is not going to make it and that she's never going to become anything in her life."

Schumann believed her own 50-year HRO against Wiberg was necessary primarily because of Wiberg's violations of a previous restraining order. The first violation occurred when Wiberg called Schumann's workplace, claiming that she was a drug addict and had been convicted of felonies. Subsequent violations occurred when Wiberg repeatedly called Schumann's family members to talk about Schumann. Wiberg also made disparaging comments about Schumann to both her family members and to community members. For

[1] These facts are a summary of the parties' testimony at the HRO hearing.

example, Schumann testified that Wiberg "tells people that I'm a snitch. That I'm—well, working with the cops. That I'm a drug addict. I'm a drug dealer. I'm taking his daughter away from him. . . . He thinks I have people out to murder him; that I've hired people to murder him."

Wiberg generally denied Schumann's allegations, but at times contradicted his own testimony. For example, Wiberg stated that he had never called Schumann's workplace, but later admitted that he did call the corporate office once during the previous restraining order. After initially denying that he had contacted Schumann's family members, Wiberg confirmed that he had spoken with her stepfather once. Later, he said that he had texted Schumann's stepfather twice. Wiberg also consistently denied posting about daughter's mental health on social media, but acknowledged that he had posted about his experiences with Dakota County Social Services.

In observing the parties' conduct at the hearing, the court found that Schumann provided credible testimony, while Wiberg did not. This assessment was informed by Wiberg's "aggressive state" and the contradictory statements he made while testifying. The district court then granted a 50-year HRO for Schumann and a one-year HRO on behalf of daughter.[2]

Wiberg appeals.

[2] Schumann did not file a brief, so we proceed pursuant to Minnesota Rule of Civil Procedure 142.03.

D E C I S I O N

We review the grant of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). So long as the district court's findings are supported by the evidence and the court properly applied the law, this court will not set aside the ruling. *Hemmingsen v. Hemmingsen*, 767 N.W.2d 711, 716 (Minn. App. 2009), *review granted* (Minn. Sept. 29, 2009) *and appeal dismissed* (Minn. Feb. 1, 2010).

A court may grant a petition for an HRO if it finds that there are "reasonable grounds" to believe harassment has occurred. Minn. Stat. § 609.748, subd. 5(b) (2018). Harassment is defined to include "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 or another." Minn. Stat. § 609.748, subd. 1(a)(1) (2018). Whether specific conduct rises to the level of harassment is objective. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006) ("[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."). The court's findings of fact regarding whether harassment occurred must be based on the parties' testimony and the exhibits properly before the district court. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004).

Using the abuse-of-discretion standard as our guide, we first address Wiberg's claim that there was insufficient evidence to support the petition for an HRO against him. Then

we move to Wiberg's second argument, that the district court improperly denied the admission of evidence at the hearing.[3]

I. The district court did not abuse its discretion by granting the HROs.

In reviewing the sufficiency of the evidence, we first turn to the 50-year HRO in which Schumann is the protected party. Here, following an evidentiary hearing, the district court found that Schumann had a previous HRO against Wiberg. While the HRO was in effect, Wiberg called Schumann's workplace, the business's corporate office, and her family members in violation of that order. And after initially denying that he had called Schumann's work or her family members, Wiberg conceded that he had called the corporate office and had called Schumann's stepfather once or texted him twice.

In testimony that the court found credible, Schumann further explained how Wiberg's actions affected her safety, security, and privacy. The statements Wiberg was alleged to have made about Schumann being a "snitch" and a drug addict have "destroyed" her reputation. In addition, Wiberg's actions make Schumann feel "on guard" wherever

[3] Wiberg also argues that the judge was biased against him, that Schumann perjured herself at the hearing, and that the district court and Dakota County were guilty of conspiracy, depriving Wiberg of his parental rights, misconduct of a public official or employee, and criminal defamation. We initially note that Dakota County is not a party to this appeal, and is not a party to these proceedings. Further, Wiberg provides only a cursory recitation of these claims and does so without adequately briefing these arguments. As such, even if Dakota County were a party to these proceedings, we would not reach these issues on appeal. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal.").

she goes and that she must "constantly defend [herself]" during arguments with family and community members about "if [she] is right or if he's right."

Next we turn to the sufficiency of the evidence with regard to the HRO against Wiberg on behalf of daughter. The district court found that Wiberg had posted daughter's private medical information on social media with the intent to harm daughter and Schumann. The court determined that the postings were made in direct violation of a report from Dakota County Social Services which prohibited Wiberg from "talk[ing] about his child's mental health or well-being on social media," and instructed him to take down existing posts or be found in contempt of court.

As with her testimony regarding her own HRO, the court again found Schumann's testimony about the impact Wiberg's postings had on daughter's safety, security, and privacy to be credible. Not only did Wiberg's posts about daughter's health make otherwise private information public, the posts also harmed her reputation. Furthermore, Schumann testified that the posts contributed to daughter's declining mental health, to the point that daughter has been hospitalized.

When reviewed as a whole, the record supports the district court's decision. Not only did Wiberg repeatedly commit intrusive or unwanted acts by repeatedly calling Schumann's workplace and family members and posting about daughter's mental health issues, his actions also had a substantial effect on the safety, security, and privacy of Schumann and daughter. Based on these findings, there was sufficient evidence to support the district court's decision to grant the HROs.

II. The district court properly denied the admission of evidence.

During the hearing, Wiberg attempted to introduce evidence of Schumann's prior felony convictions in North Dakota, text messages purporting to show Schumann making fraudulent statements to obtain welfare money, and daughter's medical records. The district court declined to admit these pieces of evidence, finding the information irrelevant to whether Wiberg's conduct rose to the level of harassment.

The district court has broad discretion when determining whether to admit evidence. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). If the court determines that the evidence is irrelevant, it will not be admitted, even if it *could* be admitted under another rule. Minn. R. Evid. 407 1997 comm. cmt. As such, we review the district court's decision to exclude the evidence of Schumann's past and daughter's medical records as irrelevant for an abuse of discretion.

Here, the issue before the court was whether Wiberg repeatedly committed intrusive and unwanted acts against Schumann and daughter that did or were intended to have adverse effects. Neither Schumann's past nor daughter's medical history are related to that issue. Therefore, we conclude that the district court acted within its broad discretion when it excluded as irrelevant evidence of Schumann's prior history and daughter's medical records.

To attempt to persuade us otherwise, Wiberg argues that the texts and prior convictions should have been admitted because Minnesota Rules of Evidence 608 and 609 allow the court to admit evidence of a witness's prior convictions and character. Minn. R. Evid. 608, 609. But while rules 608 and 609 do allow the admission of evidence relating

to the truthfulness, character, or conduct of a witness, the threshold question for admissibility of evidence is relevance. Minn. R. Evid. 401 1977 comm. cmt. Because the submissions at issue were not relevant to whether Wiberg repeatedly committed intrusive and unwanted acts against Schumann and daughter, the district court was within its broad discretion to exclude this otherwise admissible evidence. Wiberg further contends that the district court should have admitted daughter's medical records into evidence. He cites Minnesota Rule of Evidence 803(4), claiming that medical records are admissible under the hearsay exemption. But again, the threshold issue is one of relevance. Minn. R. Evid. 401.

In sum, both the record and the relevant law support the district court's decision to grant the HROs. There was sufficient evidence to support the finding that Wiberg harassed both Schumann and daughter when he repeatedly called Schumann's employer and family members in violation of a previous restraining order, disparaged Schumann, and posted about daughter's mental health issues on social media. Furthermore, the district court properly applied the law when it denied Wiberg's request to introduce irrelevant evidence at the hearing. As such, the district court did not abuse its discretion.

Affirmed.