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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1991**

Derik John Grittner, et al.,
Respondents,

vs.

Mark Steven Buhr,
Appellant.

**Filed September 8, 2020
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-CV-19-4818

Derik Grittner, Sartell, Minnesota (pro se respondent)

Michelle Grittner, Sartell, Minnesota (pro se respondent)

Jonathan D. Wolf, Rinke Noonan, St. Cloud, Minnesota (for appellant)

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

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Mark Steven Buhr challenges the district court's decision to grant a harassment restraining order (HRO) against him in favor of respondents Derik John

Grittner and Michelle Grittner and their minor children.¹ Mr. Buhr argues that (1) none of his conduct was related to Mr. Grittner or the Grittners' minor children, (2) he never communicated to the Grittners the information used in part as a basis for the HRO, and (3) the temporary ex parte HRO that the district court found that he violated (conduct that the district court relied on in part in granting the HRO) was overbroad. We affirm.

FACTS²

Mr. Buhr and Ms. Grittner work together at a medical center in St. Cloud. Before the incidents in this case, their relationship was friendly, as reflected in the large number of personal messages and pictures the two shared over social media. But Mr. Buhr escalated his attentions in a manner that made Ms. Grittner uncomfortable, including by purchasing her a spa gift certificate for Mother's Day. On June 7, 2019, Mr. Buhr wrote Ms. Grittner a message disclosing that he had romantic feelings for her. Ms. Grittner responded that they could only be friends and that the romantic overtures needed to stop. Mr. Buhr replied that he would never stop and that he would wait.

Within a week of Mr. Buhr's message to Ms. Grittner about his romantic feelings for her, Mr. Buhr's wife found the messages between the two on the Buhr family's tablet computers. Ms. Buhr found photos of Ms. Grittner and believed they were evidence of an affair. Ms. Buhr also looked at Mr. Buhr's internet history and found that he had made

¹ The Grittners have not filed a brief on appeal. *See* Minn. R. Civ. App. P. 142.03 (noting that, if a respondent fails to file a brief, this court will decide the appeal on the merits).

² The facts of this case come from testimony taken at a hearing on two HRO petitions. The Grittners brought the first petition and Jantelaa Buhr, Mr. Buhr's spouse at the time, brought the second.

multiple searches related to firearms and gun shows and had watched multiple videos on explosives.

While examining the tablets, Ms. Buhr found a document of Mr. Buhr's with a list of phrases (planning document). The planning document begins with a six-digit number.³ Beneath that number is the Grittners' home address. Beneath the Grittners' address, the planning document has the following bulleted entries:

- R at show
- Practice
- Follow to land, eval
- Execute

There is a gap and then another list:

- Cloths
- Car
- Shoes

On June 14, Ms. Buhr contacted Mr. Grittner and showed him the contents of the tablets. Though Mr. Grittner had never met Mr. Buhr, he and Ms. Grittner soon petitioned the district court on behalf of themselves and their minor children for a HRO against Mr. Buhr. The district court granted an ex parte HRO, which required Mr. Buhr to have no contact with the Grittners or their children, to stay at least 1,000 feet away from the Grittners' house, and to stay at least 250 feet away from Ms. Grittner at their place of work.

An evidentiary hearing on the HRO petition took place on October 14, 2019. Ms. Buhr and Mr. Grittner both testified that they thought Mr. Buhr's search history and

³ The same six-digit number also appears near the top of another document found on the computers. Mr. Buhr had used this second document to draft the message to Ms. Grittner disclosing his romantic feelings for her.

planning document showed that he planned to do violence, which frightened them. Mr. Grittner testified that he believed the six-digit number referred to Mr. Buhr's birth year, a number related to Ms. Grittner, and a number related to the Grittner children. Mr. Grittner also testified that he (Mr. Grittner) was a hunter and that the fact that Mr. Buhr had searched for gun shows made him nervous that Mr. Buhr was seeking to obtain a gun with a limited paper trail.

Ms. Grittner testified that, after seeing the contents of the tablets, she was "dumbfounded" and "shocked, scared." She stated that she did not give Mr. Buhr permission to take the photos, which included multiple images of her walking to her car to leave work.

Mr. Buhr offered alternative explanations for the contents of the tablets. He stated that he had been speaking with a friend who had previously gone through a divorce and that the two had talked about hunting. He claimed that the searches about firearms were an attempt "to get educated" on what would be necessary to go hunting. He explained that the videos he viewed on "explosives" were videos that he watched with his son about a compound called "Tannerite" that explodes when it is shot. He testified that he learned about Tannerite from a coworker, who testified at the hearing that she had shown him a Tannerite video because she had used it for a gender-reveal party to send up colored powder.

Finally, Mr. Buhr also offered an explanation for the planning document, stating that the list was some notes he made in preparation for coaching baseball. He said that the six-digit number was a new code for his phone, based on his year of birth, an important

year for the Milwaukee Brewers baseball team, and his son's birthday. He claimed that the Grittner address was meant to be a reminder to bring doughnuts to Ms. Grittner based on an ongoing interaction involving a patient. He said "R at show" meant "run at show," meaning that his baseball team, which had lost some of their bigger, stronger players, would need to run a lot to make it to the state tournament. Mr. Buhr stated that "practice" referred to baseball practice and that "Follow to land, eval" was supposed to be "follow to lead to eval," which was a reference to a change in his baseball team after many older students graduated. "Execute" referred to executing the practice plan. "Cloths, car, shoes" was a reminder to bring his clothes, car, and shoes to work on baseball practice days because he left directly from work to go to practice.

Apart from the evidence relating to the information on the Buhrs' tablets, testimony at the evidentiary hearing established that Mr. Buhr had come within 250 feet of Ms. Grittner multiple times after the issuance of the ex parte HRO. Mr. Buhr and Ms. Grittner work at a multi-building campus. After the incidents in question, their employer granted a request by Ms. Grittner to be relocated to another building on the campus. Ms. Grittner testified that on one occasion she ran into Mr. Buhr at her new building, even though he had no reason to be there and was supposed to stay away. Mr. Buhr claimed that he leaves work through the building in question and did not see her until she came around a corner. Mr. Buhr also testified that Ms. Grittner was supposed to be in another location, farther away. But Ms. Grittner provided an email sent to the entire facility that had informed everyone that the team at the previous location would be working elsewhere due to water damage.

Ms. Grittner also saw Mr. Buhr walk within 250 feet of her multiple times while she was eating lunch outdoors.⁴ Mr. Buhr claimed he had started a new activity of walking during lunch as a way to relieve stress from his ongoing divorce proceedings. In response to Mr. Buhr's conduct, Ms. Grittner called the police multiple times to enforce the ex parte HRO. She also stated that while Mr. Buhr came within 250 feet of her, he did not approach her.

Ms. Grittner also testified that Mr. Buhr used the company messaging system to publicly display messages that he knew she would likely see. The messages were status messages on the employer's messenger program. Mr. Buhr set his status on the program to messages like: "Never give up. Today is hard and tomorrow may be worse but the day after tomorrow I may find my Sunshine."; "The two basic items necessary for life are Love and Sunshine"; "People resist change because they focus on what they think they have to give up instead of what they have to gain."; "stop being afraid of what could go wrong and start being excited about what could go right"; and "Don't change yourself for someone who doesn't appreciate the way your [sic] are. Find someone who does." Ms. Grittner testified that "Sunshine" was a reference to earlier conversations she had with Mr. Buhr in which he called her "his ray of sunshine coming to work." Mr. Buhr denied that he intended to contact Ms. Grittner through these messages.

⁴ Ms. Grittner took pictures of Mr. Buhr walking by her and of the location at which she ate lunch.

After the hearing on the matter, the district court granted the Grittners' requested HRO. The district court concluded that Mr. Buhr had contacted Ms. Grittner multiple times after she told him not to do so and had walked by her multiple times despite the ex parte HRO. It determined that Mr. Buhr had "frightened Petitioner(s) with threatening behavior" by asking Ms. Grittner to leave Mr. Grittner, conducting internet searches for "guns and gun shows," and making the planning document that included the Grittners' home address. Lastly, the district court concluded that Mr. Buhr had taken pictures of Ms. Grittner without her permission.

Mr. Buhr appeals.

DECISION

An appellate court reviews the issuance of 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). It reviews factual findings for clear error, giving due regard to the district court's credibility determinations. *Id.* at 843-44. The issuance of an HRO will be reversed if it is not supported by sufficient evidence. *Id.*

"A person who is a victim of harassment may seek a restraining order from the district court" Minn. Stat. § 609.748, subd. 2 (2018). "The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor."⁵ *Id.* A district court may issue a restraining order if

⁵ In 2020, the legislature amended this section to add "conservator" to the persons who may seek a restraining order on behalf of minors. *See* S.F. 3357, 2020 Reg. Sess., art. 1, § 39 (Minn. 2020).

it has “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.” Minn. Stat. § 609.748, subd. 1(a)(1) (2018). “[T]he harassment statute is ‘quasi-criminal’ and is subject to the heightened definiteness requirement.” *Dunham v. Roer*, 708 N.W.2d 552, 568 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 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.” *Id.* at 567.

Communication of tablet information

The district court found that Mr. Buhr “frightened Petitioner(s) with threatening behavior” based on the contents of Mr. Buhr’s search history and his planning document. While the district court did not explicitly so state, this finding amounts to an implicit finding that Mr. Buhr’s explanations were not credible. Mr. Buhr does not argue that the district court clearly erred in its factual finding that the searches and planning document represented threats against the Grittners. Rather, he argues that the contents of the tablets cannot constitute “intrusive or unwanted acts, words, or gestures” with an “intended target” because he never communicated the contents to the Grittners. The contents were only communicated when Ms. Buhr took the tablets and showed them to Mr. Grittner.

Although Mr. Buhr did not communicate the threats to the Grittners, section 609.748 defines harassment as including “acts, words, or gestures that *have* a substantial adverse effect . . . on the safety, security, or privacy of another.” (Emphasis added.) The district court found Mr. Buhr’s searches and planning document constituted threatening behavior that frightened the Grittners, and that this conduct, in addition Mr. Buhr’s other conduct, had “a substantial adverse effect” on the Grittner’s safety, security, or privacy. The plain language of the statute, even under a heightened definiteness requirement, does not require Mr. Buhr to intend to cause the substantial adverse effect, only that his conduct caused it and was objectively unreasonable. *See Dunham*, 708 N.W.2d at 567.

Mr. Buhr argues that the Grittners could not be the “intended target” of his actions because he never sent his tablets’ contents to the Grittners. But, given the district court’s finding that Mr. Buhr’s conduct was threatening, the Grittners’ address at the top of Mr. Buhr’s list supports the conclusion that the Grittners were the intended targets of Mr. Buhr’s planning. On this record, and given the district court’s implicit rejection of Mr. Buhr’s explanations, it was not an abuse of discretion for the district court to determine that Mr. Buhr’s search history and planning document supported the issuance of an HRO.

HRO with respect to Mr. Grittner and the Grittners’ minor children

In a somewhat related argument, Mr. Buhr argues the HRO lacks support because none of his conduct targeted Mr. Grittner or the Grittners’ children. Minnesota law defines harassment as including “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) (emphasis added).

Mr. Buhr argues that his conduct does not meet the statutory definition of harassment with respect to Mr. Grittner and the Grittners’ children because he never “met, nor ever attempted to communicate with, any of these people.” He argues that the statutory language emphasized above permits courts to issue an HRO only in the context of an actor and intended target, contrasting an HRO with an order for protection, which the law permits only within the context of certain relationships. *See* Minn. Stat. § 518B.01, subd. 2(b) (2018) (defining “Family or household members”). And, he contends, Mr. Grittner and the Grittners’ children were not “intended targets.”

The district court found that Mr. Buhr’s internet search history and planning document constituted threatening behavior that had a substantial adverse effect on the safety and security of the Grittners. The address at the top of the planning document supports the conclusion that Mr. Buhr’s threatening behavior was directed towards the entire Grittner household, not just Ms. Grittner. Even if “intended targets” are required by the HRO statute as Mr. Buhr argues, on this record, it was not clear error for the district court to conclude that all of the Grittners, not just Ms. Grittner, were the intended targets of Mr. Buhr’s conduct. While Mr. Buhr did not communicate the threats to the Grittners, as discussed above, the statute defines harassment as including “acts, words, or gestures that *have* a substantial adverse effect . . . on the safety, security, or privacy of another.” (Emphasis added.) Mr. Buhr’s searches and planning had a substantial adverse effect on the Grittners, even if it was Ms. Buhr who ultimately communicated his behavior to them.

The district court did not abuse its discretion by including Mr. Grittner and the Grittners' children in the HRO.

Overbreadth of the ex parte HRO

Finally, Mr. Buhr argues that the initial ex parte HRO was overbroad when it restricted him from coming within 250 feet of Ms. Grittner at their place of work. This point is relevant, he argues, because, in granting the HRO, the district court relied in part on a factual finding that Mr. Buhr had repeatedly violated the ex parte HRO by walking within 250 feet of Ms. Grittner.

A temporary restraining order issued before an HRO hearing must not be overly broad. *See Dayton Hudson Corp. v. Johnson*, 528 N.W.2d 260, 263 (Minn. App. 1995) (noting that a temporary restraining order based on physical conduct and attempted theft was overly broad when it prevented the party from contacting the store or its employees). We have evaluated whether a restraining order is overly broad by weighing the victim's interests against the burden placed on the restrained party. *See, e.g., Davidson v. Webb*, 535 N.W.2d 822, 824 (Minn. App. 1995) (considering the restrained party's ability to work from his office rather than at the site of the victim's business); *Welsh v. Johnson*, 508 N.W.2d 212, 215 (Minn. App. 1993) (considering the constitutionality of the harassment statute by balancing the "well-being, tranquility, and privacy of the [victim's] home" against the restrained party's rights to express his views (quotation omitted)).

While Mr. Buhr claims that a 250-foot restriction for two people working at the same facility results in a facially overbroad ex parte order, we conclude that the restriction was reasonable based on the facility and the conduct in question. The restraining order was

in part meant to address the fact that Mr. Buhr had taken pictures of Ms. Grittner without her permission at their workplace. The 250-foot radius is a reasonable way to balance allowing Mr. Buhr to continue to work at the same facility as Ms. Grittner while limiting his ability to take unwanted photographs of her. The fact that most of Mr. Buhr's violations of the temporary restraining order appear to have occurred in connection with his lunch-time walks suggests that the 250-foot restriction was not overly burdensome with respect to his work itself.

Mr. Buhr suggests that a five-foot restriction, like in the temporary restraining order in *Dayton Hudson Corp.*, would have been sufficient, but this proposal does not address the differences between that case and this one. In *Dayton Hudson Corp.*, the temporary restraining order came after physical encounters between the restrained party and a store's employees after the restrained party tried to steal merchandise. 528 N.W.2d at 261-62. The restraining order prevented the party from going within five feet of the store. *Id.* at 263. Here, the restraining order was meant in part to address the privacy concerns implicated by Mr. Buhr taking pictures of Ms. Grittner without her permission. A five-foot restriction would be insufficient to address those concerns. The ex parte HRO was not overly broad.

Affirmed.