STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0114

Gail Marie Peterson,
and o/b/o minor child, petitioner,
Respondent,

vs.

Preston David Vaughn,
Appellant.

Filed August 17, 2020
Affirmed
Segal, Chief Judge

Martin County District Court
File No. 46-CV-19-1060

Gail Marie Peterson, Fairmont, Minnesota (pro se respondent)

Preston David Vaughn, Fairmont, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Segal, Chief Judge; and Kirk, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

SEGAL, Chief Judge

In this pro se appeal from the district court's grant of a harassment restraining order, appellant argues that the record does not support the district court's findings of fact and credibility determinations. We affirm.

FACTS

Appellant Preston David Vaughn and respondent Gail Marie Peterson are divorced and share custody of their five minor children. On October 14, 2019, Peterson filed a petition for a harassment restraining order (HRO) against Vaughn on behalf of herself and their eldest child. The petition contained numerous allegations and included an attachment with nearly 100 pages of text and other electronic messages to Peterson from Vaughn.

At the evidentiary hearing on the HRO, Peterson appeared pro se and Vaughn was represented by counsel. Peterson, Vaughn, their eldest child, and D.H., a friend who also served as the couple's mediator, all testified at the hearing.

Peterson testified that Vaughn repeatedly sent her harassing text messages. She testified that he would send her messages that she is a bad mother who does not go to their children's events and that "people in the town are maybe laughing that I'm the preacher's wife that is just slutting around, that I'm an adulterer." She also testified that he would send her other messages trying to reconcile with her. She stated that they were allowed to text each other about the children, but that she told him to stop texting her about other

things. Additionally, she testified that Vaughn admitted he sent her text messages pretending to be a different man and anonymously sent her flowers at work.

Peterson also testified about multiple incidents of in-person encounters with Vaughn when he called her names in public and otherwise made her feel harassed. She described an incident after their divorce when he approached her at their children's school during an evening event and yelled at her in front of other people, "you're bedding him, you're bedding him," referring to Peterson and her current boyfriend. She said she told him to leave, but he wouldn't. She testified that he came to her work multiple times. Peterson also testified that in August of 2019, Vaughn drove up when she was outside of an auto body shop with some friends and "started flinging his hands around, yelling out the window that I was an adulterer."

Peterson testified that Vaughn had twice taken their children from her house, during her parenting time, without her permission or letting her know. He also repeatedly came to her house while she was at work and she would find him playing ball with their children when she arrived home. This was also without her knowledge or permission. She testified that Vaughn drove by her house multiple times a day and she believed that he follows her and tracks where she goes in town. She testified that he also entered her home without her permission, leaving a bag of their children's clothes in the garage on one occasion and leaving a photograph on another.

Finally, Peterson testified that Vaughn sent an explicit picture of her via text to D.H. Peterson saw the picture and stated it was "a naked picture of me, but with him blotting out

my breasts." She testified that she had never consented to the photograph and did not know it existed before D.H. showed it to her. A copy of the photograph was submitted by Peterson as an exhibit to her petition.

Vaughn admitted that he went to Peterson's house when she was not there. He testified that "I like to see my kids as much as possible, and it hadn't been an issue, so I'd go over and stand on the sidewalk and play catch with the boys almost daily." He said he would be on the sidewalk instead of the yard because "just not to push an issue, just not to – you know, I'm just trying to be cautious." Vaughn testified that there was at least one time that he took the children off of Peterson's property without her permission, but "I wasn't secretive about it." Vaughn, in fact, posted on social media that he had "kidnapped" his children. Vaughn admitted that he had entered Peterson's garage to leave the bag of clothes and the photograph, but testified that he thought it was not a problem. Vaughn also admitted that he drives past Peterson's house multiple times a day.

Vaughn admitted that he took the explicit photograph of Peterson and sent it to D.H. Vaughn testified that he set up cameras in their living room without notifying Peterson when they were living together. He testified that he "edited" the photograph before sending it to D.H. by marking out Peterson's breasts and he sent it because he "was just trying to express to [D.H.] some of the things that went on [in front of their children]." The photograph is only of Peterson and Peterson denied, during her testimony, that she appears naked in front of the children.

The district court issued an HRO with respect to Peterson, but found that there were not reasonable grounds to issue an HRO on behalf of the eldest child. In addition to the form HRO, the district court included a detailed memorandum setting out its various findings of fact and explaining the basis for the court's credibility determinations and legal conclusion. Specifically, the district court found that there were reasonable grounds to conclude that Vaughn: (1) followed, pursued or stalked Peterson; (2) made uninvited visits to Peterson; (3) made harassing phone calls and sent harassing text messages to Peterson; (4) called Peterson abusive names; (5) broke into Peterson's residence; (6) took pictures of Peterson without permission; and (7) disseminated a private sexual image of Peterson. This appeal follows.

D E C I S I O N

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). "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 v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We will reverse the issuance of an HRO only if it is not supported by the evidence or if the district court improperly applied the law. *Id.*; *see* Minn. Stat. § 609.748, subd. 5(b)(3) (2018). A district court's "[f]indings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a

mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

A district court may grant a harassment restraining order when 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). Harassment under the HRO statute 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." Minn. Stat. § 609.748, subd. 1(a)(1) (2018). A district court must base its findings in support of a restraining order on testimony and documents properly admitted. *Kush*, 683 N.W.2d at 844. "The determination of what constitutes an adequate factual basis for a harassment order is left to the discretion of the district courts." *Id*. at 846.

Vaughn argues that the district court had insufficient evidence to support the findings of fact.[1] Vaughn, however, fails to present evidence of clear error by the district court. His argument is, in essence, that he should have been believed instead of Peterson.

[1] Vaughn makes various claims that "the court made erroneous rulings upon conjecture, supposition, and speculation motivated by a bias towards the petitioner, whether conscious or sub-conscious." He claims that several of the district court's findings are "fabricated." And that "there was no merit to harassment claims concerning" multiple incidents raised at the district court hearing. For these propositions, he quotes from the district court transcript and does not cite any evidence or caselaw for the proposition that these claims had no merit. An assignment of error in a brief based on "mere assertion" and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). Since we find no error by the district court, we do not reach these claims.

This is not a valid ground for reversal on appeal. *See Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that, on appeal, appellate courts "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder").

Here, the district court's findings of fact are supported by the testimony presented at the evidentiary hearing. Indeed, Vaughn, himself, admits doing many of the things found by the district court. While Vaughn attributes innocent motives to his actions, the district court discounted those as part of its credibility findings. For example, the district court found that Vaughn's posting on social media that he had "kidnapped" his children when he took them without permission demonstrated that he was aware he lacked Peterson's agreement and was doing something inappropriate.

The district court came to the same conclusion about Vaughn's testimony that he thought it was okay to go to Peterson's house when she wasn't there in order to play ball with the children. The district court pointed to Vaughn's testimony, that he would only play with them on the sidewalk instead of the yard because he was "just trying to be cautious," as evidence that Vaughn knew he was engaging in activity that Peterson would not have approved.

Similarly, the district court found lacking in credibility Vaughn's testimony that he shared the photograph of Peterson with D.H. only because he was concerned about Peterson's conduct in front of their children. Weighing credibility is in the exclusive

province of the district court and Vaughn has provided no valid grounds for disturbing the district court's credibility determinations on appeal. *Kush*, 683 N.W.2d at 843-44.

Here, the district court found numerous grounds, any one of which could suffice to support the issuance of an HRO.[2] The district court presented a detailed rationale for its credibility and other determinations in a supplemental memorandum to the standard HRO form order. The district court's findings are supported by ample evidence. The fact that the district court carefully weighed the evidence can also be seen in its decision to decline to grant an HRO on behalf of the eldest child, determining that the evidence did not support this part of the petition. The district court did not abuse its discretion in granting the HRO on behalf of Peterson.

Affirmed.

[2] We note that Vaughn challenges the district court's finding that he disseminated a "private sexual image" of Peterson because he marked out Peterson's breasts before sending the image to D.H. We need not address this issue, however, because we conclude that there are numerous other grounds to support the grant of the HRO. "Where a decisive finding of fact is supported by sufficient evidence and is adequate to sustain the conclusions of law, it is immaterial whether some other findings are not so sustained." *Hanka v. Pogatchnik*, 276 N.W.2d 633, 636 (Minn. 1979).