STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1350

Emily Mae Peterson,
Respondent,

vs.

Scott Howard Meyer,
Appellant.

Filed June 14, 2021
Affirmed
Florey, Judge

Olmsted County District Court
File No. 55-CV-19-8837

Timothy A. Woessner, Duane R. Quam, III, Weber, Leth, & Woessner, PLC, Dodge Center, Minnesota (for respondent)

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this challenge to a harassment restraining order (HRO), appellant argues that the district court erred (1) by admitting evidence that respondent had failed to disclose; (2) by extending the HRO period for two years from the hearing date despite the lengthy ex parte temporary restraining order; (3) by relying on evidence supporting a prior HRO to support

issuance of the current HRO; and (4) by granting the HRO on insufficient evidence. We affirm.

FACTS

On August 27, 2020, the district court granted a harassment restraining order (HRO) against appellant Scott Howard Meyer in favor of his ex-girlfriend, respondent Emily Mae Peterson. The two have a minor child and were never married.

Respondent obtained a previous HRO against appellant on January 8, 2018. The HRO was based on messages sent by appellant to respondent in October 2017 through Our Family Wizard[1] (OFW). The messages contained threats made by appellant toward respondent that he would "never go away," that he was "writing a book and naming names" in order to "out" respondent, and that he would "ruin [respondent]."

On February 6, 2018, after the first HRO was served, appellant sent respondent an OFW message stating:

> I am writing a book. It will be based upon everything in the public record already related to what has transpired between you and me and the courts. I have already hired a writer. The book is in the works. Names will be named, all are within the public record.

Based on this message, appellant was charged with and convicted of a misdemeanor HRO violation in October 2019.

One hour after his conviction was entered, appellant sent an OFW message to respondent stating, "I'm writing a book about [the child's] and my issues over the past 11

[1] Our Family Wizard is a court-approved communication website for families that have difficulty with communication.

years. Just wanted you to know." On December 16, 2019, appellant sent respondent an OFW message after she sent flowers to appellant's family on the occasion of appellant's father's death. The message began by thanking respondent, and then stated:

> However, think about how much more [the child] would have been able to see [the child's] grandfather had you not kidnapped [the child] from CA. Your actions again on the surface are always so beautiful and thoughtful. It's how you trick and manipulate everybody. Whereas I just tell it like it is, the truth. But your true self I know all too well, lying, hypocritical, deceitful, manipulative, mean, bitter, resentful, etc. person. I know the true you, and [s]o does [the child].

On December 20, 2019, respondent filed a petition seeking a new two-year HRO, identifying three grounds for the request: (1) the OFW messages from October 2017 which were the subject of the first HRO; (2) appellant's conviction for misdemeanor HRO violation in October 2019; and (3) the OFW message appellant sent shortly after his conviction.

On December 23, 2019, the district court granted respondent an ex parte temporary restraining order valid until December 23, 2021. On January 6, the ex parte order was served on appellant, and he requested a contested hearing. The hearing was scheduled for January 16, 2020, but appellant's counsel requested a continuance stating:

> [Appellant] understands that he is currently subject to the Temporary Harassment Restraining Order that was issued by the Court on December 23, 2019, and that the order will remain in effect until at least the HRO hearing. In requesting this continuance, [appellant] hereby waives any right to a speedy HRO hearing and instead respectfully requests that the HRO hearing be continued to a later date in early April of 2020.

The district court granted appellant's continuance request, and the hearing was rescheduled for March 25. On March 17, appellant's counsel requested another continuance because of the COVID-19 pandemic, noting that his client understood "that the temporary HRO will continue to remain in effect during any period of continuance." The continuance was granted, and the hearing was scheduled for July 14. On July 9, appellant's counsel asked for and received a third continuance.

On August 19, 2020, the district court held a contested HRO hearing. At the hearing, respondent offered several OFW messages sent to her by appellant as evidence. Appellant objected to the admission the OFW messages sent in December 2019 and in 2020, arguing that they should not be admitted because respondent failed to produce them in response to appellant's discovery request. The district court received these messages into evidence over appellant's objection, determining:

> I am not convinced that [respondent's] failure to produce these communications, which were all authored by [appellant] this year, prejudiced [appellant's] case in any way. First, [appellant] knows what he wrote. And second, I find that harassment occurred before any of these 2020 messages were sent.

The district court found that respondent credibly testified that she felt "threatened and unsettled by [appellant's] messages," and determined that appellant had engaged in harassment of respondent. The district court issued a two-year HRO in favor of respondent.

This appeal follows.

DECISION

I. Appellant was not prejudiced by the admission of the contested messages.

Appellant argues that the district court erred by admitting into evidence the December 2019 OFW message and the 2020 OFW messages that respondent failed to disclose after a discovery request. The district court's evidentiary rulings are reviewed for an abuse of discretion, and obtaining relief on appeal requires the complaining party to show that any error was prejudicial. *Uselman v. Uselman*, 464 N.W.2d 130, 138 (Minn. 1990).

Our review of the record shows the district court did not abuse its discretion in admitting the OFW messages. First, as the district court noted and appellant does not contest, the OFW messages objected to were all sent by appellant in December 2019 or in 2020, making his argument that he had no knowledge of these messages and could not prepare for his defense unconvincing. Second, the district court, having found that the harassment occurred before any of the 2020 OFW messages were sent, did not rely on the disputed material. Therefore, appellant has not shown, and cannot show, that he was prejudiced by the admission of the contested messages.[2]

II. The district court did not err by granting an HRO that would expire two years after the contested-hearing date.

Appellant argues that the district court erred by issuing the two-year HRO to expire on August 27, 2022, when it had already entered a two-year ex parte temporary restraining

[2] Because the district court did not rely on the 2020 messages and appellant does not dispute that he wrote them, appellant has failed to show any prejudice from their admission. As such, we need not address appellant's discovery issue.

order that was set to expire on December 23, 2021. The district court may issue an ex parte temporary restraining order if it finds reasonable grounds to believe that the respondent has engaged in harassment. Minn. Stat. § 609.748 subd. 4 (2020). The temporary restraining order is in effect until the HRO hearing. Minn. Stat. § 609.748 subd. 4(d). A respondent subject to an ex parte order may request a hearing within 20 days after completed service of the petition. Minn. Stat. § 609.748, subd. 4(e), (f). Following a hearing, the district court may grant an HRO for up to two years. Minn. Stat. § 609.748, subd. 5(b)(3) (2020).

Review of the record shows that an ex parte temporary restraining order was granted in favor of respondent on December 23, 2019, with an expiration date of December 23, 2021. Appellant was served with the HRO on January 6, 2020, and immediately requested a hearing. The hearing was delayed for eight months because appellant's counsel asked for and received three continuances. When making those requests, appellant acknowledged that the temporary restraining order issued by the district court on December 23, 2019, remained in effect until the hearing. The temporary restraining order was replaced by the two-year HRO at the hearing on August 27, 2020, as permitted by statute. Minn. Stat. § 609.748, subd. 5(b)(3). The district court did not err by granting respondent a two-year HRO following the contested hearing.

III. The district court did not rely on stale evidence in granting a new HRO.

Appellant argues that the district court in effect unlawfully extended the 2018 restraining order by relying on a message that was the basis for the 2018 restraining order. We review the issuance of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). A court may issue a two-year HRO, but may not

extend the period of the HRO beyond two years, except in strictly limited circumstances. *Roer v. Dunham*, 682 N.W.2d 179, 181 (Minn. App. 2004), *review denied* (Minn. Mar. 28, 2006). But a court may issue a new HRO based on the statutory standards and new evidence. *Id.* at 181-82.

Here, the requirements for issuing an HRO were met: a properly filed petition, hearing, and finding of harassment based on the October 2019 and December 2019 OFW messages, incidents that did not form the basis for the earlier HRO. *See id*. (upholding an HRO where the requirement for issuing an initial restraining order were met). Review of the record shows that the district court mentioned the messages from 2018 in order to provide context to the current proceeding and to show that appellant's harassment continued even though an HRO was in place. After reviewing the messages leading to the first HRO, and then considering the October 2019 and December 2019 messages, the district court found that

> these were repeated incidents of intrusive and unwanted words that were intended to have a substantial adverse effect on the safety, security, or privacy of the [respondent]. One can infer [appellant's] harassing purpose from the hostile and derogatory language he uses. But we also know [appellant's] intent was malevolent because he expressly announced that intent: "I will ruin you."

The fact that the district court reviewed the new allegations in the context of the previous incidents does not diminish the district court's reliance on the new incidents of harassing conduct as a basis for the new HRO. The district court's issuance of a new HRO was not an unlawful continuation of the former HRO.

IV. The HRO is supported by sufficient evidence.

Appellant argues that the district court abused its discretion by issuing an HRO without sufficient evidence. A district court may issue an HRO if the court finds that there are reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3). In order to prove that harassment has occurred, Minnesota law requires both (1) "objectively unreasonable conduct or intent on the part of the harasser" and (2) "an objectively reasonable belief on the part of the person subject to" harassment. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). Objectively unreasonable conduct includes conduct that "goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect on another's safety, security or privacy." *Kush v. Mathison*, 683 N.W.2d 841, 846 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). Statements that are merely argumentative or inappropriate do not rise to the level of harassment. *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000).

We will reverse the issuance of an HRO if the decision is not supported by sufficient evidence. *Kush*, 683 N.W.2d at 844. "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." *Id.* at 843-44. "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).

Here, respondent testified that appellant's message about writing a book "causes a lot of stress," and that the message had been sent "on multiple occasions, which kind of led to some of the first restraining order." Regarding the December 16 message, respondent testified that the message was a threat and showed "[appellant is] never going to stop and this is going to be ongoing." She further testified that her child's name was used in the messages "to try and mask it [as messages pertaining to parenting time], but it's more of a threatening and calling me names." She explained that the messages have had an adverse effect on her, are "very unsettling," and "[pulls her] away from the kids." The district court found respondent's testimony credible.

Our review of the record supports the district court's findings that the October 2019 and December 2019 OFW messages constituted harassment. The district court stated:

> I find that [appellant] has harassed [respondent] with words he intended to threaten, denigrate and distress her, and thus have a substantial adverse effect on her safety, security and privacy. Further, I find credible [respondent's] testimony that [appellant's] OFW messages have in fact had their intended effect; and I find her reaction objectively reasonable.

The record supports the district court's finding that appellant perpetrated "repeated incidents of intrusive or unwanted acts, words, or gestures" that were "intended to have a substantial adverse effect on the safety, security or privacy" of respondent. *See* Minn. Stat. § 609.748, subd. 1(a)(1). Because "[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, we determine that the district court did not abuse its discretion in issuing the HRO.

Affirmed.