STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1524

Sarah Anne Trisko, and o/b/o Minor Children,
Respondent,

vs.

Karen Mary Hartung,
Appellant.

Filed September 20, 2021
Affirmed
Bratvold, Judge

Stearns County District Court
File No. 73-CV-20-7186

Sarah Anne Trisko, Sauk Centre, Minnesota (pro se respondent)

John A. Abress, Franz Hultgren Evenson, P.A., St. Cloud, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges the district court's order granting a harassment restraining order (HRO) against her and on behalf of her next-door neighbor and her neighbor's minor children. Appellant argues that the district court abused its discretion by (1) admitting hearsay evidence and crediting that evidence in its findings, and (2) granting the HRO with insufficient evidence to support its findings. We conclude sufficient record evidence

sustains the HRO even after we set aside the challenged hearsay evidence from our review. Thus, we affirm and need not decide the hearsay issue.

FACTS

In October 2020, respondent Sarah Anne Trisko petitioned for a two-year harassment restraining order (HRO) against her neighbor, appellant Karen Mary Hartung. Trisko and Hartung live on adjacent lots on the shores of Sylvia Lake. The Triskos moved into their lake home in July 2020. The district court held an evidentiary hearing on Trisko's petition in November 2020, during which it received testimony from Trisko, her husband Josh, Hartung, and another neighbor.[1] The district court received three exhibits into evidence, all photographs.

At the end of the testimony, the district court discussed the evidence Trisko offered in support of her claim.

1. Photographs by Hartung

The district court first discussed Trisko's testimony that, when they had friends over for a bonfire in August 2020, Hartung took many photos of the Trisko family. A month later, the Trisko's son photographed Hartung taking photos of a boulder wall being built on the Trisko property. Hartung denied her photos were of the Trisko property and said she was photographing the moon on the night of the bonfire.

The district court found, first, Trisko and Hartung have an "ongoing boundary issue," and this issue "seems to be a legitimate purpose for why those photographs may be

[1] To avoid confusion, this opinion refers to Sarah Trisko by her last name and Josh Trisko by his first name.

being taken." Next, the district court considered whether the photographs invaded Trisko's privacy and it determined that they did not because Hartung was "simply taking photographs of an adjoining neighbor[']s] property" that was "out in the open."

2. Hartung's comments about Trisko's husband

The district court next considered Hartung's comments to Trisko about her husband. Trisko testified Hartung made sexual comments about her husband—that Hartung enjoyed watching Josh jump off the dock "in his underwear" and that she wanted to "wrap her arms" around Josh while riding on a jet ski with him. Hartung denied making these comments. The district court first noted Josh had not sought protection, but also found that Hartung's sexual comments were relevant to Trisko's testimony that Hartung invaded her privacy.

3. Hartung's comments about the cleaning lady and her questions to the Triskos' child

Trisko testified Hartung made a series of intrusive and harassing comments when the family moved into their lake home. The district court specifically credited Trisko's testimony that "as soon as they moved into the property essentially, they were approached" by Hartung, who "knew a whole wealth of information about them: other houses they looked at when they were looking to buy this property, who their cleaning lady was, what faith their cleaning lady was, the fact that their cleaning lady left the Amish community." The district court found it "is bizarre that a neighbor would have that level of detail about a neighbor that just moved in." The district court also found Hartung was "prying too far into the details of other people's private lives and not staying in [her] lane."

The district court also considered evidence of Hartung questioning the Triskos' daughter. Trisko testified her nine-year-old daughter reported that Hartung asked whether the Trisko family goes to church and whether they pray every day. Hartung denied speaking with the Triskos' daughter. The district court found Trisko's testimony credible and had "no reason to doubt [Hartung's] comments were made to the child." The district court also found Hartung's questions to the daughter were "prying into the family's personal life about religious faith and different things of that nature. That is an invasion."

4. Hartung and the Trisko garage

The district court discussed evidence that Hartung had entered the Trisko property, specifically their detached garage and the loft above their garage, without their permission. After purchasing the property, the Triskos began working on the property, involving some tasks in their garage and installing a boulder wall. Trisko and her husband testified Hartung entered their property several times, but they also acknowledged they invited Hartung onto their property on occasion such as for a boat ride and to water the trees in their absence. Hartung testified the Triskos never told her to stay off their property, and every time she entered their property or garage, it was because the Triskos had invited her.

The district court credited both parties' testimony: it accepted evidence of instances when the Triskos permitted Hartung to enter their property, and found "there is also testimony that some of [Hartung's] intrusions have been uninvited. And I do believe that to be credible." The district court found Hartung "venture[d] into a garage uninvited. And I find that troubling."

Finally, the district court found the Triskos erected a fence and installed a clothesline, which they used to "put[] up a clothing barrier to prevent prying eyes from peering into their property." The district court concluded Trisko was substantially adversely affected by Hartung's repeated harassment. The district court, therefore, found Trisko had prevailed on her claim for an HRO to protect herself and the minor children. The district court granted the HRO for one year to give the parties a "cooling-off period to sort out the property disputes and to resolve to be[] adults once again."

Hartung appeals.

DECISION

Hartung raises two issues on appeal. First, Hartung argues the district court improperly admitted hearsay evidence when it allowed Trisko to testify to her nine-year-old daughter's statements about her conversation with Hartung. The district court received this evidence over Hartung's hearsay objection. Second, Hartung argues the district court erred by granting the HRO because Hartung did not engage in harassment as a matter of law and there was insufficient evidence to support granting the HRO. We understand Hartung's second argument as a challenge to the sufficiency of the evidence because her brief does not articulate an issue relating to the interpretation of the HRO statute. We consider the second issue first.

This court reviews the district court's decision to grant an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). In doing so, we review the district court's factual findings for clear error and give due regard for its opportunity to judge witness credibility. *Id.*

We begin our review of Hartung's challenge to the sufficiency of the evidence by considering what the law requires before an HRO petition may be granted. The district court may issue an HRO if it finds there are reasonable grounds to believe a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3) (2020). Harassment is defined, in part, as "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) (2020). This court has stated, "whether certain conduct constitutes harassment may be judged from both *an objective standard*, when assessing the effect the conduct has on the typical victim, and *a subjective standard*, to the extent the court may determine the harasser's intent." *Kush v. Mathison*, 683 N.W.2d 841, 845 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004) (emphasis added). Also, objectively unreasonable conduct "goes beyond an acceptable expression of outrage and civilized conduct." *Id.* at 846.

Finally, the HRO statute generally requires "repeated incidents," which is two or more instances of harassing conduct. *Id.* at 844; *see also Peterson*, 755 N.W.2d at 766 (stating one incident is not enough to establish harassment absent infliction of bodily harm or attempt to inflict bodily harm). The preponderance-of-the-evidence standard applies to the district court's decision to grant an HRO. *See* Minn. Stat. § 609.748 (2020) (not identifying standard of proof for HROs); *State by Humphrey v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993) (stating statutory silence on a standard of proof "is regarded as a signal that the legislature intended the preponderance of the evidence standard" to apply).

To address Hartung's arguments, we first analyze the district court's findings about Hartung's intrusive or unwanted acts, words, or gestures and then determine whether record evidence supports the district court's findings. Because we determine that Hartung's repeated prying into Trisko's private affairs and Hartung's entry into the Trisko garage are supported by record evidence, we finally consider whether the district court's findings of a substantial adverse effect are supported by the evidence.

A. Repeated instances of Hartung's prying

The district court credited Trisko's testimony that, before they moved into the home, Hartung stated she knew their cleaning lady's name, where she lived, and that she was Amish and had left the Amish—information the Triskos did not know. Hartung also told Trisko she knew the other properties they had viewed before they bought their new home on Sylvia Lake.

The district court found Trisko's testimony credible and found "as soon as [the Triskos] moved into the property essentially, they were approached by" Hartung, who "knew a whole wealth of information about them." And the district court found Hartung "is a neighbor that is prying too far into the details of other people's private lives and not staying in [her] lane. And that would be a great discomfort to anybody who just moved into the area to find out that they have been researched to such a degree." The district court reasoned the purpose of this HRO "is to ensure that further prying doesn't happen, and I believe [an HRO] to be appropriate."

The district court also carefully analyzed Trisko's testimony that Hartung said she "enjoys watching [Josh] jump off the dock in his underwear and would love to go on a jet

ski ride with [Josh] so she can wrap her arms around him." Josh testified similarly. Hartung denied she made these comments. The district court noted Josh was not seeking protection and found that Trisko's testimony was not "overly credible," but the district court also found "that these comments were made and people parted ways." While the district court appears to have rejected the comments about Trisko's husband as harassment toward Josh, the district court's findings suggest it considered the same comments as evidence of Hartung invading "the privacy of [Trisko's] home."

For statements to rise to the level of harassment, the statements must be "intrusive or . . . were intended to adversely affect the safety, security, or privacy" of the person who heard them. *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000). Hartung's statements about Trisko's husband are relevant to her claim that Hartung invaded her privacy and are like Hartung's comments about the cleaning lady. A reasonable person would feel that this behavior would have a substantial impact on the person's privacy and "goes beyond an acceptable expression of outrage and civilized conduct." *Kush*, 683 N.W.2d at 846.

Hartung argues the district court found both Triskos not credible. This argument is not supported by the record. There is no indication the district court rejected Josh's testimony. The district court, in explaining its reasons for finding that Hartung's comments to Trisko about Josh did not amount to harassment of Josh, stated Trisko did not call law enforcement, and therefore the district court did not "necessarily find that overly credible here in this circumstance." But the district court otherwise credited Trisko's testimony about Hartung's prying comments and found Trisko credible.

Further, because Hartung denied most of the harassing instances testified to by the Triskos, and the district court found otherwise, we conclude the district court implicitly found Hartung was not credible. On appeal, we may consider the district court's implicit findings of fact as well as its explicit findings. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (considering implicit credibility findings on appeal from the district court's grant of an order for protection). Thus, record evidence supports the district court's finding that Hartung's repeated comments pried into Trisko's private affairs.

B. Hartung's entry into the Trisko garage

The district court weighed the evidence about Hartung entering the Trisko property without permission. Although Josh testified the Triskos sometimes invited Hartung onto their property, he also testified he once saw Hartung go into the detached garage on the Trisko property and into the loft above the garage without invitation or permission. Josh could not remember the specific date of the incident. The district court acknowledged it was hard to discern when Hartung was or was not invited onto the Trisko property. But the district court also found "testimony that some of her intrusions have been uninvited. And I do believe that to be credible."

Josh's lack of specificity about when Hartung entered the Trisko garage is not necessarily fatal to the district court's findings. *See Davidson v. Webb*, 535 N.W.2d 822, 823-24 (Minn. App. 1995) (affirming the district court's finding of harassment even though the witness could not remember specific dates or conversations). A reasonable person would feel that a neighbor entering their garage and the loft above it would substantially adversely impact the person's safety, security, and privacy. *See Kush*, 683 N.W.2d at 845.

Thus, record evidence supports the district court's finding that Hartung entered the Trisko garage without permission.

C. Substantial adverse effect

Record evidence also supports the district court's finding of a substantial adverse effect on Trisko. Trisko testified her family installed a video surveillance system for the inside of their home in August 2020 and installed the exterior surveillance system in October 2020. She also testified they installed a four-foot chain-link fence between their properties to contain their dogs and because of Hartung's intrusions. Trisko testified they put up a clothesline that "is blocking [Hartung's] view from the window that she sits at every single day."

The district court found these mitigation efforts showed Hartung's harassing conduct had a substantial adverse effect on Trisko's safety, security, or privacy because the Triskos "would not have done those acts if there was not some feeling of intrusion by them," which was "substantial." Trisko also testified about her feelings of being intruded upon by Hartung. Trisko testified she understood Hartung's prying statements aimed to obtain private information about them, for example, about their cleaning lady. Trisko testified she felt like Hartung is "always curious as to what we're doing."

Because our review sustains the sufficiency of the evidence supporting the HRO without considering the challenged hearsay evidence, we need not determine the hearsay issue because any error would be harmless. Minn. R. Civ. P. 61 (requiring that harmless error be ignored); *see also In re Mortg. Elec. Registration Sys., Inc.*, 835 N.W.2d 487, 493 (Minn. App. 2013) (refusing to consider district court's error on the standard of proof

because "to the extent that the district court erred in failing to apply the preponderance of the evidence standard, that error was harmless").

In sum, even after we exclude the challenged hearsay evidence from our analysis, other record evidence sufficiently supports the district court's HRO against Trisko. Because record evidence supports the district court's factual findings, and its determinations follow applicable law, we conclude that the district court did not abuse its discretion by issuing the HRO.

Affirmed.