STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1084

Rebecca Sue Nash,
Appellant,

vs.

James Allen Piens,
Respondent.

Filed March 7, 2022
Affirmed
Smith, John, Judge[*]

Olmsted County District Court
File No. 55-CV-21-2027

Mark A. Olson, Olson Law Office, Burnsville, Minnesota (for appellant)

Arens Dilaveri, Dilaveri Law Firm, Rochester, Minnesota (for respondent)

Considered and decided by Frisch, Presiding Judge; Gaïtas , Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's dismissal of appellant's petition for a harassment restraining order because the district court did not err in its conclusions of law which are supported by its findings of fact.

FACTS

Appellant Rebecca Sue Nash filed a petition for a harassment restraining order (HRO) against her former partner, respondent James Allen Piens. Nash alleged Piens made harassing phone calls and sent harassing text messages to her, made false statements about her, used social media to harass her, and made false accusations and threats against her current boyfriend. The district court issued an ex parte temporary HRO granting Nash's petition, finding there were "reasonable grounds to believe that [Piens] has engaged in harassment." The district court ordered that Piens "shall have no direct or indirect contact" with Nash except regarding "the children and parenting time which shall be civil and respectful," "is prohibited from being within 2-500 ft blocks" of Nash's home except "if agreed to pick up the children for parenting time when [Piens] shall not leave his vehicle," and "is prohibited from being within 2-500 ft blocks" of Nash's workplace.

Piens requested a hearing on the temporary HRO. Following two days of hearings, the district court dismissed the HRO. The district court first found that the "August 2020 text messages between [Piens] and [Nash]'s boyfriend were both crude and inappropriate, but do not rise to the level of harassment." Next, it found that Piens had informed Nash about a conversation he had had with one of their children about Nash's boyfriend's alleged

abusive behavior toward the child and concluded that "[t]he reporting itself of an allegation does not rise to unreasonable, repeated unwanted conduct by [Piens]." Finally, it stated that Piens failure "to comply with the [t]emporary HRO to remain in his vehicle for parenting time exchanges" was "concerning," but not harassment because Nash was not home and it resulted from miscommunication between Nash and Piens. The district court ultimately concluded "[t]he evidence is insufficient to support an HRO," and dismissed her petition for an HRO. Nash appeals.

DECISION

We review a district court's HRO decision for an abuse of discretion. *See Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008) (applying abuse of discretion review to "the issuance of an HRO"). We give due regard to the district court's credibility determinations and will not set aside its findings of fact unless clearly erroneous. *Id.* And we review de novo whether the facts found by the district court satisfy the statutory criteria for harassment. *See id.* (explaining that the authority to grant an HRO is statutory and that appellate courts review questions of statutory interpretation de novo). Nash's only argument on appeal is that the district court's conclusion that Piens's actions do not amount to harassment is not supported by its findings of fact. We review that question de novo.

Additionally, Nash, as the appellant, has the burden to show error on appeal. *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (stating that "on appeal error is never presumed" and "[t]he burden of showing error rests upon the one who relies upon it."). Stemming from that burden, Nash also has the responsibility to provide any necessary transcripts on appeal. Minn. R. Civ. App. P. 110.02, subd. 1. Nash elected not to do so.

"While the lack of a transcript does not automatically require dismissal of an entire appeal, lack of a transcript does limit the scope of appellate review to whether the district court's conclusions of law are supported by its findings of fact." *In re Bender*, 671 N.W.2d 602, 605 (Minn. App. 2003) (citing *Duluth Herald & News Trib. v. Plymouth Optical Co.*, 176 N.W.2d 552, 555 (1970)). Nash acknowledges as much in her briefing.

A district court may issue an HRO if "there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2020); *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). "Harassment," for purposes of an HRO is defined by statute to include "a single incident of physical or sexual assault" as well 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). A single incident of the latter type of conduct is not harassment. *Peterson*, 755 N.W.2d at 766. Furthermore, a district court may find harassment only if there is 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 764 (quotations omitted). Objectively unreasonable conduct includes conduct that "goes beyond an acceptable expression of outrage and civilized conduct." *Kush*, 683 N.W.2d at 846. Inappropriate or argumentative statements alone are not considered harassment. *Id.* at 844.

Here, the district court's conclusion that Piens's actions do not constitute harassment is supported by its findings of fact. The district court's order implicitly

recognizes Piens's description of events as credible and finds his actions were not intended to have—and did not have—a substantial adverse effect on Nash. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (on conflicting testimony, observing that the district court's OFP findings "implicitly indicat[ed]" that it found certain evidence credible). For example, the district court found the August 2020 texts "were both crude and inappropriate" but "do not rise to the level of harassment," and we note Nash's attorney conceded at oral argument before this court that she and Piens continued to interact after those text messages. Additionally, the district court observed that Piens "views his actions as protecting his [children]." It characterized Piens's allegation against Nash's boyfriend as merely reporting to Nash what he heard from their child and his violation of the temporary HRO as occurring when Nash was not home because of a lack of communication between himself and Nash regarding their parenting time exchanges.

While we normally show deference to the district court's credibility determinations, *Peterson*, 755 N.W.2d at 761, we must accept them without question here because the lack of a transcript limits the scope of our review to whether the district court's conclusions of law are supported by its findings of fact, *Bender*, 671 N.W.2d at 605. The district court's implicit determination that Piens was credible underlies its finding that Piens's actions did not have a substantial adverse effect on Nash nor were intended to have a substantial adverse effect on Nash. In turn, this finding supports the district court's conclusion that Piens's actions do not constitute harassment under Minn. Stat. § 609.748, subd. 1(a)(1).

Affirmed.