STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1141

Mary Madonna Schlumpberger and on behalf of minor child,
Respondent,

vs.

Renee Anita Vasko,
Appellant.

Filed July 11, 2022
Reversed
Johnson, Judge

McLeod County District Court
File No. 43-CV-21-537

Mary Madonna Schlumpberger, Mankato, Minnesota (*pro se* respondent)

Renee Vasko, Silver Lake, Minnesota (*pro se* appellant)

Considered and decided by Ross, Presiding Judge; Johnson, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Renee Anita Vasko agreed to sell, and Mary Madonna Schlumpberger agreed to buy, residential real property pursuant to a contract for deed. Vasko and Schlumpberger later exchanged contentious text messages about the transaction. Schlumpberger asked Vasko to send any written communications to her through her attorney. Vasko thereafter sent three text messages directly to Schlumpberger. Schlumpberger petitioned the district

court for a harassment restraining order (HRO) against Vasko. After an evidentiary hearing, the district court granted the petition and issued an HRO. We conclude that the district court erred by concluding that Vasko engaged in harassment. Therefore, we reverse.

FACTS

In March 2021, the parties agreed that Vasko would sell residential real property to Schlumpberger for $85,000. Schlumpberger made a down payment of $5,000 on March 21, 2021. The parties signed a contract for deed on March 29 and April 5, 2021. The contract requires 60 monthly payments and a balloon payment on April 1, 2026.

Between April 8 and 12, 2021, the parties exchanged numerous e-mail messages and text messages concerning the means of making monthly payments, a water leak that had caused damage in a bathroom, and whether Vasko had grounds to cancel the contract for deed. On April 12, 2021, Schlumpberger sent a text message to Vasko stating, "If you wish further contact you can call my attorney." Vasko responded by sending text messages stating that Schlumpberger's last text message was "a jumbled mess of numbers and letters" and that Vasko "had not received [the] attorney information." Approximately two hours later, Schlumpberger sent another text message, stating: "Last warning do not contact me again. Have your attorney contact my attorney . . . with any issues." Vasko responded by sending a text message stating that she would apprise Schlumpberger of the date and time when a contractor would inspect the water leak and water damage, by suggesting that Schlumpberger close a plumbing valve, and by asking Schlumpberger to "[p]lease . . . not use" the leaky shower until the water leak was fixed. Schlumpberger did

not respond. It appears that Vasko did not contact Schlumpberger for the next seven days. On April 20, 2021, Vasko sent a text message to Schlumpberger, apparently in response to a message from Schlumpberger requesting Vasko's PayPal information. Vasko provided Schlumpberger her PayPal account name, reminded Schlumpberger of other permissible forms of payment, and stated that she was waiting for a contractor to set a date and time to inspect the water leak and water damage.

On the same day, April 20, 2021, Schlumpberger petitioned the district court for an HRO against Vasko. Schlumpberger alleged that Vasko had harassed her by sending her text messages after being told to contact her only through her attorney, by threatening to cancel the parties' contract for deed, and by threatening to enter the residence when Schlumpberger was not present to inspect or repair a water leak and water damage. The district court issued a temporary HRO on an *ex parte* basis. The petition and temporary HRO were served on Vasko on May 5, 2021. On the following day, Vasko requested a hearing on the petition. The district court held an evidentiary hearing in late May 2021. Schlumpberger and Vasko appeared and represented themselves. Neither party called any other witness.

In June 2021, the district court granted Schlumpberger's petition and issued an HRO, which, for two years, prohibits Vasko from harassing Schlumpberger and from having direct or indirect contact with Schlumpberger except through Schlumpberger's attorney. Vasko requested leave to file a motion for reconsideration, which the district court denied.

Vasko appeals and seeks reversal of the HRO. Schlumpberger has not filed a responsive brief. This court previously issued an order stating that the matter would be submitted on the merits pursuant to rule 142.03 of the rules of civil appellate procedure.

DECISION

Vasko argues that the district court erred by issuing the HRO. She contends that her conduct toward Schlumpberger does not constitute "harassment," as that term is used in the applicable statute.

A district court may issue an HRO if it finds "that there are reasonable grounds to believe that [a person] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2020). For purposes of an HRO, the term "harassment" is defined by statute to mean, in relevant part, "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." *Id.*, subd. 1(a)(1). 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." *Peterson v. Johnson*, 755 N.W.2d 758, 764 (Minn. App. 2008) (quotations omitted). Objectively unreasonable conduct includes conduct that "goes beyond an acceptable expression of outrage and civilized conduct." *Kush v. Mathison*, 683 N.W.2d 841, 846 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). Accordingly, statements that are merely "inappropriate or argumentative" are not, for that reason alone, harassment. *Id.* at 844 (citing *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002)). This court applies

a clear-error standard of review to a district court's findings of fact and a *de novo* standard of review to district court's conclusion that, in light of given facts, a person has engaged in harassment. *Peterson*, 755 N.W.2d at 761.

In this case, the district court made a general finding that Vasko "[m]ade harassing phone calls or sent harassing text messages to" Schlumpberger. Because there is no evidence of any telephone calls between the parties, we construe the district court's general finding to refer exclusively to text messages. The district court made more particular findings that "when disputes developed between" the parties about the property, "the communication quickly escalated from what was necessary and appropriate to a level that constitutes harassment." The district court found that Schlumpberger "very clearly and specifically inform[ed] Respondent that communication should go only through her attorney" but that Vasko "ignore[ed]" that request and "continued to repeatedly send emails and text messages to" Schlumpberger. The district court further found that Vasko's messages were "negative" and "aggressive" and "had a substantial adverse effect on Petitioner's privacy and security."

On appeal, Vasko contends, "There is no evidence of any harassing behavior or content in [her] texts or emails towards" Schlumpberger. Vasko also notes that Schlumpberger contacted her directly, even after requesting that Vasko contact Schlumpberger only through Schlumpberger's attorney, and that Vasko sent text messages directly to Schlumpberger in response to Schlumpberger's text messages.

The record reveals that Vasko sent three text messages to Schlumpberger after Schlumpberger's first request that Vasko contact her only through her attorney. First,

Vasko responded to Schlumpberger's first request by stating that Schlumpberger's text was a "jumbled mess of numbers and letters," that she did not have Schlumpberger's attorney's contact information, and that Schlumpberger may be held responsible for Vasko's attorney fees. Second, Vasko responded to Schlumpberger's second request later that day by stating that she would apprise Schlumpberger of the date and time when a contractor would inspect the water leak and water damage, by suggesting that Schlumpberger close a plumbing valve, and by asking Schlumpberger to "[p]lease . . . not use" the leaky shower until the water leak is fixed. Third, Vasko sent a text message to Schlumpberger providing her PayPal account name (apparently in response to Schlumpberger's request), asking Schlumpberger to "[p]lease explain" why Schlumpberger sent a previous text message, and by stating that she was still waiting for a contractor to set a date and time to inspect the water leak and water damage.

These three text messages do not satisfy the statutory definition of harassment. They are "repeated incidents" of "acts" and "words," and they may have been "unwanted." *See* Minn. Stat. § 609.748, subd. 1(a)(1). But there is no evidence of "objectively unreasonable conduct or intent on the part of" Vasko and "an objectively reasonable belief on the part of" Schlumpberger that Vasko's "acts" and "words" would have "a substantial adverse effect" on Schlumpberger's sense of "security" or "privacy." *See Peterson*, 755 N.W.2d at 764. Each of the three text messages at issue had a business purpose: to complete a real-property transaction or to resolve a dispute concerning the condition of the property. The district court described the messages as "negative" and "aggressive." But statements that are merely "inappropriate or argumentative" are not, for that reason alone,

harassment. *Kush*, 683 N.W.2d at 844. Rather, the statements must be "beyond an acceptable expression of outrage and civilized conduct." *Id.* at 846. In the context of the parties' relationship, each of the three text messages at issue is within reasonable, socially acceptable limits in terms of language and tone. In addition, the HRO is not properly based on Schlumpberger's request that Vasko communicate with her only through her attorney. Vasko was under no contractual obligation to do so. A communication that does not comply with such a request is not harassment *per se*; it is harassment only if it satisfies the requirements of the statute.

In sum, the facts found by the district court do not support the conclusion that Vasko engaged in harassment, as that term is defined in section 609.748, subdivision 1(a)(1), of the Minnesota Statutes. Thus, the district court erred by granting Schlumpberger's petition and by issuing the HRO.

Reversed.