

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1467**

Kari Anne Visser and on behalf of Desirae Mae McPhail and D.J.M., minor child,
Respondent,

vs.

Blair E. Willprecht,
Appellant.

**Filed July 25, 2022
Affirmed
Cochran, Judge**

Swift County District Court
File No. 76-CV-21-264

Kari Anne Visser, Murdock, Minnesota (pro se respondent)

John E. Mack, New London Law, P.A., New London, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Cochran, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges a harassment restraining order (HRO), arguing that the district court erred by determining that he engaged in “harassment” within the meaning of the HRO statute, Minn. Stat. § 609.748 (2020). He also seeks reversal based on the district court’s use of a form order to issue the HRO. We affirm.

FACTS

Appellant Blair Willprecht and respondent Kari Visser are neighbors. In July 2021, Visser filed a petition for an HRO against Willprecht on behalf of herself, her adult child ward, and her minor child. The district court issued a temporary, ex parte HRO. Willprecht requested and was granted a hearing on the matter.

At the hearing, the district court heard testimony from both Visser and Willprecht. Visser testified to the events that caused her to file the HRO petition against Willprecht. Visser explained that Willprecht lives nearby and uses a gravel road that runs along the back of Visser's property to get to his house. Visser has a garden near the gravel road.

Visser testified that beginning in the spring of 2020, Willprecht engaged in a series of acts that resulted in Visser becoming fearful for her safety and the safety of her children. On one occasion, Visser's son was planting a tree in their garden. Willprecht pulled up on his motorcycle and began "screaming and swearing" at Visser's son, telling him that he "can't plant that f-ing tree there." After this incident, Willprecht's behavior "started to escalate." Visser stated that Willprecht would drive his motorcycle very close to her while she was working in her garden, would accelerate excessively, causing gravel to fly into the air, and would scream swear words "in [her] direction." Because she was concerned about Willprecht driving his vehicles too close to her, Visser had a friend put stakes in the ground around the garden. On multiple occasions in July and August 2020, Willprecht either attempted to remove or did remove stakes. And, on one occasion, after Willprecht had tried to remove some of the stakes, Willprecht approached Visser's son, yelled at him to

“get the f-ing stakes—give ’em to me,” and then spun the wheels on his van, kicking up rocks.

On another occasion in mid-July, Visser was attempting to move a trailer that she had parked on her property. Willprecht began “screaming and swearing” at her and said to her “you have an f-ing death wish.” That same day, Visser saw Willprecht digging in her yard with a shovel. During another incident, Willprecht swung a shovel around in an aggressive manner while swearing at her. Visser also testified that in August, Willprecht parked several vehicles along the gravel road that “block[ed] over half the street” while he washed a vehicle for several hours while walking along her property line. She stated that this prevented her from going into her garden and she “felt like it was in a threatening manner.”

During the hearing, Visser submitted a photograph and videos to the district court of several of her interactions with Willprecht. She testified that Willprecht’s behavior made her feel threatened, uncomfortable, and concerned for the safety of herself and her children.

Willprecht testified that Visser had fabricated or provided misleading accounts of several of the incidents. He stated that his problems with Visser began when she pounded stakes around his van and along his driveway. He testified that none of the stakes were placed on Visser’s property and that he twice almost ran into the stakes on his motorcycle. He denied threatening Visser’s children, aggressively approaching Visser’s son, or swinging a shovel at Visser.

Following the hearing, the district court issued an HRO that is effective until July 22, 2023. The district court issued its order using a form order entitled “Order Granting Harassment Restraining Order after Hearing (Minn. Stat. § 609.748).” The form contains standard language that the district court may utilize by placing an “x,” as well as space for the district court to include its own findings of fact and ordering provisions. Here, the district court checked a box indicating that it found reasonable grounds to believe that Willprecht had “engaged in harassment which has or is intended to have a substantial adverse effect on [the] safety, security, or privacy” of Visser and her children. The district court also included specific findings of fact to support this determination. Those findings included that Willprecht: (1) made multiple uninvited visits by approaching Visser and her children; (2) frightened Visser and her children with threatening behavior by engaging in “aggressive verbal conduct with frequent use of the ‘F’ word, accompanied by quick body movements”; and (3) damaged Visser’s property by removing or damaging stakes that Visser placed along the property boundary line. The district court also checked another box on the HRO order form indicating its finding that “[t]he harassment has or is intended to have a substantial adverse effect on Petitioner’s safety, security, or privacy.” Based on these findings, the district court ordered Willprecht to refrain from harassing Visser (and her children) and prohibited Willprecht from coming within 100 feet of Visser’s home.

Willprecht appeals.

DECISION

We review a district court’s decision to issue an HRO for an abuse of discretion. *Borth v. Borth*, 970 N.W.2d 699, 701 (Minn. App. 2022). “A district court abuses its

discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record.” *Id.* (quotation omitted). We will not set aside a district court’s findings of fact unless they are clearly erroneous. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). We review the district court’s application of law de novo. *Harris ex rel. Banks v. Gellerman*, 954 N.W.2d 604, 607 (Minn. App. 2021).

Willprecht argues that the district court abused its discretion by issuing the HRO for three separate reasons. First, he contends that the record does not support issuance of the HRO. Second, Willprecht argues that the district court should have applied a heightened standard to determine whether his conduct met the definition of “harassment” under section 609.748. Third, Willprecht appears to contend that the district court failed to make the factual findings necessary to support issuing the HRO because it used a form order. We address each argument in turn.

I. The HRO is supported by the record.

A district court may issue an HRO after a hearing if it finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3). “Harassment” is defined in relevant 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.” *Id.*, subd. 1(a)(1). A determination of harassment under section 609.748 “requires 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.” *Dunham v. Roer*,

708 N.W.2d 552, 567 (Minn. App. 2006), *rev. 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*, 683 N.W.2d at 846.

Willprecht argues that the record does not support the district court’s finding that his conduct had or was intended to have “a substantial adverse effect on [the] safety, security, or privacy” of Visser and her children. In the HRO, the district court identified the following underlying facts to support its finding of a substantial adverse effect: Willprecht made multiple uninvited visits to Visser and her family members, Willprecht frightened Visser with threatening behavior including “aggressive verbal conduct” and “quick body movements,” and Willprecht damaged Visser’s property.

Willprecht does not challenge any of these underlying factual findings regarding his conduct. Instead, Willprecht asserts that his conduct did not have a substantial adverse effect on Visser and her family because “none” of his actions “were directed against Ms. Visser’s safety, security or privacy.” He contends that the evidence reflects that his conduct was at most “rude[]” and “extremely annoying.” We are not persuaded.

The district court’s finding that Willprecht’s conduct had or was intended to have a substantial adverse effect on the safety, security, or privacy of Visser and her family is reasonably supported by the record. Visser’s testimony at the HRO hearing detailed several incidents in which Willprecht approached Visser or her son near their property line, screamed and swore at them—including making the statement “you have an f-ing death wish”—and repeatedly removed or damaged the stakes Visser placed near her property

line. Visser further testified that Willprecht's behavior made her feel threatened, uncomfortable, and concerned for the safety of herself and her children. Willprecht's conduct was objectively unreasonable *and* caused an objectively reasonable belief on the part of Visser that her safety, security, or privacy was threatened. *See Dunham*, 708 N.W.2d at 567. His conduct went "beyond an acceptable expression of outrage and civilized conduct, and instead cause[d] a substantial adverse effect on another's safety, security or privacy." *Kush*, 683 N.W.2d at 846. Consequently, the record contains sufficient evidence to support the district court's finding that Willprecht's conduct had "a substantial adverse effect on [the] safety, security, or privacy" of Visser and her family.

Willprecht further argues that the record does not support a finding that he *intended* to have a substantial adverse effect on the safety, security, or privacy of Visser and her children. Because section 609.748 establishes a disjunctive rule, which requires *either* an objective effect on the victim *or* the subjective intent of the harasser, we need not reach this issue. *See* Minn. Stat. § 609.748, subd.1(a)(1) (including incidents "that have . . . or are intended to have a substantial adverse effect"). For the reasons set forth above, we conclude that the record supports the district court's finding that Willprecht's conduct objectively had a substantial adverse effect on Visser and her children's safety, security, or privacy.

II. Strict scrutiny does not apply to the district court's determination of whether Willprecht's conduct constitutes "harassment."

Willprecht next argues that the district court should have applied a "heightened definiteness" standard to determine whether his conduct met the statutory definition of

harassment. In support of this argument, Willprecht contends that “[b]ecause § 609.748 implicates the First Amendment, questions of whether given acts fall under that statute are subject to strict scrutiny.” On that basis, Willprecht appears to argue that his actions against Visser were not clearly enough directed at her “safety, security, or privacy” within the meaning of section 609.748 to constitute harassment. This argument is unavailing.

Willprecht cites only one case, *Dunham*, to support his argument. He contends that *Dunham* requires courts to apply a “heightened definiteness” standard to determine whether a given action affects another’s “security” or “privacy” as those terms are used in the HRO statute, section 609.748. But *Dunham* does not stand for that proposition. Rather, the portion of *Dunham* on which Willprecht relies addresses the legal standard used by this court to determine whether the definition of “harassment” in section 609.748 is unconstitutionally vague on its face. *See* 708 N.W.2d at 567-68 (concluding that a “heightened definiteness” standard applies to determine whether section 609.748, subdivision 1(a)(1), is unconstitutionally vague because the statute is “quasi-criminal”). Willprecht does not raise a constitutional challenge to section 609.748. Accordingly, *Dunham* is inapposite to the issue presented in this case: whether Willprecht’s conduct constituted harassment within the meaning of the statute. Moreover, as Willprecht acknowledges, *Dunham* held that the definition of “harassment” included in section 609.748, subdivision 1(a)(1), is not unconstitutionally vague. *Id.* at 568.

III. The district court's use of a form order does not constitute an abuse of discretion.

Finally, Willprecht argues that he “has significant problems with the ‘form letter’ order” issued by the district court. Willprecht appears to contend that a district court cannot meet its obligation to make the findings necessary to support an HRO issued after a hearing by using a form order with standard HRO language. *See* Minn. Stat. § 609.748, subd. 5(b)(3) (authorizing a district court to issue an HRO if “the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment”). But Willprecht does not identify any legal authority that precludes the use of a form order for purposes of granting an HRO. Appellate courts “generally decline to consider issues that are not adequately briefed.” *Carlson v. Simon*, 888 N.W.2d 467, 470 n.3 (Minn. 2016).

Regardless, we discern no abuse of discretion by the district court in its use of the form order. The district court did check several of the boxes indicating that it was making various findings based on the evidence at the hearing including one stating that “[t]here are reasonable grounds to believe that Respondent has engaged in harassment which has or is intended to have a substantial adverse effect on [the] safety, security, or privacy of Petitioner.” But the district court did not rely solely on the standard language. Instead, the district court made specific factual findings that it included in the order to support its determination that there are reasonable grounds to believe that Willprecht engaged in harassment. The district court’s order contains sufficient factual findings to support its issuance of the HRO.

Conclusion

In sum, we conclude that the record supports the district court's factual finding that Willprecht's conduct had a substantial adverse effect on the safety, security, or privacy of Visser and her children. We also conclude that the district court did not err in its application of the law. And we conclude that Willprecht's concerns regarding the form order do not demonstrate any abuse of discretion by the district court. Accordingly, the district court did not abuse its discretion in issuing an HRO in favor of Visser.

Affirmed.