STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1686

Dane Michael Vandervoort,
Respondent,

vs.

Anthony Pietrzak,
Appellant.

Filed July 11, 2022
Reversed
Ross, Judge

Anoka County District Court
File No. 02-CV-21-3973

Dane VanderVoort, Lino Lakes, Minnesota (pro se respondent)

Stephen M. Foertsch, Samantha J.S. Foertsch, Bruno Law, PLLC, Golden Valley, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

ROSS, Judge

A prisoner incarcerated at the Lino Lakes Correctional Facility petitioned the district court to issue a harassment restraining order against a corrections officer, alleging that the officer "constantly watches" him and "goes out of his way to come in contact" with him threateningly. The district court conducted a hearing and issued the requested restraining

order. On appeal from that order and from the district court's later denial of his motion to vacate the order, the corrections officer argues, among other things, that the evidence was insufficient to support the order. Because the district court's harassment restraining order rests in part on clearly erroneous factual findings and the findings that are supported by the evidence do not constitute harassment, we reverse.

FACTS

Respondent Dane VanderVoort (properly spelled despite the caption) is serving a prison sentence following his 2019 guilty plea to three counts of second-degree assault with a dangerous weapon for pointing a gun to threaten his girlfriend, his girlfriend's friend, and a police officer. *State v. Vandervoort*, No. A20-0123, 2020 WL 7019331, at *1 (Minn. App. Nov. 30, 2020), *rev. denied* (Minn. Feb. 24, 2021). VanderVoort, who has been incarcerated at the Lino Lakes Correctional Facility since being transferred there in April 2021, petitioned the district court in August 2021 to issue a harassment restraining order (HRO) against a prison corrections officer, Anthony Pietrzak.

VanderVoort alleged that Pietrzak had been harassing him beginning June 2021. Throughout the two months after Pietrzak allegedly began harassing VanderVoort, Pietrzak (1) "[c]onstantly watches" VanderVoort; (2) "goes out of his way to come in contact" with VanderVoort; (3) "[a]lways tries to control" VanderVoort; and (4) "use[s] foul language and demeaning remarks" toward VanderVoort and "[h]as used threatening remarks, gestures, and ill-intended body language." VanderVoort also alleged that, on July 25, 2021, "[Pietrzak] stole sunglasses from [him]." And he alleged that, on August 4, 2021, Pietrzak "told [VanderVoort] he was watching [him] and [he] should be worried."

VanderVoort and Pietrzak offered contrasting testimony at the district court's hearing on the HRO petition. The district court found that VanderVoort's testimony was more credible and proved that Pietrzak had harassed VanderVoort. It found specifically that Pietrzak "[m]ade threats" to VanderVoort, "[f]rightened [VanderVoort] with threatening behavior," and "[c]alled [VanderVoort] abusive names." The district court issued an HRO forbidding Pietrzak from having any direct or indirect contact with VanderVoort and from "being within [VanderVoort's] assigned unit" at the prison. Pietrzak twice unsuccessfully moved the district court to vacate the order.

Pietrzak appeals. We previously determined that we lack jurisdiction to hear his challenge to the district court's first motion to vacate but have jurisdiction over his challenge to the HRO and to the second motion to vacate.

DECISION

Pietrzak challenges the HRO and the district court's denial of his second motion to vacate the HRO. We need not reach Pietrzak's challenge to the order denying his motion to vacate because, for the following reasons, we hold that the HRO itself was issued improperly.

We will first consider the district court's underlying factual findings as they bear on the statutory elements of harassment. We review those findings for clear error. *Kush v. Mathison*, 683 N.W.2d 841, 843–44 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004); *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221–23 (Minn. 2021) (elaborating on clear-error review and reaffirming that it is "a review of the record to confirm that evidence exists to support the decision"). Harassment includes, among other

things not relevant to this appeal, "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). The district court's most significant factual findings lack support in the record.

The district court found that "every time [VanderVoort] had contact with [Pietrzak]," Pietrzak "would make these demeaning comments to him," referring to three terms: "f--king idiot," "stupid," and a slur related to homosexuality. The district court's finding overstates the occurrences. Responding to the district court's inquiry, "how often does this happen," VanderVoort said that "it has happened . . . on a few occasions." Prompted further, he said, "[J]ust about every time . . . I've had any contact with him," but he also testified that Pietrzak did not begin making any comments until about June 15, 2021, and that Pietrzak had been assigned to VanderVoort's unit "since [VanderVoort] got to Lino Lakes" in April 2021. The district court's finding that Pietrzak made those comments to VanderVoort "every time" the two had contact is not supported by the evidence and is therefore clearly erroneous.

The district court found that Pietrzak accurately issued a "Loss of Privileges" (LOP) charge against VanderVoort for violating prison rules by improperly transferring sunglasses but that, in doing so, Pietrzak erroneously designated the rule-infraction as a second offense when it was really only a first offense, "which results in a LOP." The district court did not find, and the record would not support a finding, that Pietrzak inaccurately made the designation purposefully. And the record does not support the finding that

VanderVoort incurred "a longer loss of privileges" because of the mistake. VanderVoort responded to the district court's inquiry about what, if any, different punishment occurs between a first LOP and a second LOP by answering, "I don't believe there's any" difference. Pietrzak explained how he had mistaken VanderVoort's infraction as a second offense. Whether or not the district court believed the explanation about how the mistaken designation occurred, the record indicates plainly that the mistake was inconsequential. The district court's finding that the mistaken designation resulted in a greater loss of privileges is clearly erroneous.

The district court found that Pietrzak "told [VanderVoort], 'I'm not going to quit—who is going to make me. I can do anything I want because I'm the union president.' [Pietrzak] made these types of comments to [VanderVoort] on at least three separate occasions." It also found that this statement constituted a threat to VanderVoort. The finding is flawed as to quantity and substance. Regarding quantity, VanderVoort did not say that Pietrzak made these comments "on at least three separate occasions." Asked how often he heard the comment, VanderVoort said, "[O]n a few occasions. I would – let's – let's say three different occasions." The difference between "three different occasions" and "at least three separate occasions" is perhaps only an inconsequential nuance, but as to substance, VanderVoort never testified that Pietrzak "told" him those things or made the comments "to" him. To the contrary, responding to the district court's specific inquiry as to whether Pietrzak was saying those things "to you," VanderVoort indicated instead that he had merely overheard Pietrzak make the comment, not that Pietrzak was speaking to VanderVoort: "I don't think that that's something you ever really say directly to anyone."

The district court's finding that Pietrzak made the comment to VanderVoort is clearly erroneous. The district court's related, unexplained finding that the comment constituted a "threat" is likewise clearly erroneous; this is so not only because no evidence supports the finding that Pietrzak made the comment to VanderVoort but also because the nature of the comment does not reasonably suggest that it was a threat.

The district court similarly found that Pietrzak "threatened" VanderVoort by telling him, "I'm watching you." The district court does not explain how a prison guard telling a prison inmate, "I'm watching you," constitutes a threat; it is self-evident that watching inmates is among a correctional officer's duties and that being watched is a prison inmate's expected experience. Without some indication of menace, merely being informed of the circumstance does not constitute being threatened, and the context undermines the finding further. VanderVoort explained, "I had a little bird that had been drawn on my [face] mask for a long time, and . . . I gave it to him. He gave me a new mask, and as he handed me my pass, he told me, 'I'm watching you' in a threatening manner." The record does not indicate why an inmate's wearing a face mask that bears a drawing or other writing is prohibited, as the context suggests, but warning an inmate, "I'm watching you," while confiscating the marked mask and replacing it with a new one does not, in context, constitute a threat. The district court's finding that the comment, "I'm watching you," constitutes a threat lacks evidentiary support.

The district court also found that Pietrzak "[f]rightened [VanderVoort] with threatening behavior as follows: see attached Memo of Law." The district court's attached memorandum of law says nothing of Pietrzak engaging in conduct intended to frighten

VanderVoort or of VanderVoort ever having been frightened. Even if the district court had included a discussion of either, the finding would be unsupported as VanderVoort never testified that he was frightened by Pietrzak's behavior. The district court's finding that Pietrzak "[f]rightened [VanderVoort] with threatening behavior" is clearly erroneous.

VanderVoort's testimony not only exposes these clearly erroneous factual findings, it also either fails to support or directly contradicts many of his initial allegations. For example, his HRO petition alleged that Pietrzak "[c]onstantly watches [VanderVoort]," but no admissible evidence suggests that this was so. Nor is the allegation particularly relevant in a prison environment. Nothing in VanderVoort's testimony supports his claim that Pietrzak "goes out of his way to come in contact" with VanderVoort. Nothing supports the claim that he "[a]lways tries to control" VanderVoort. VanderVoort's testimony reveals as a mischaracterization his claim that "[Pietrzak] stole sunglasses from [him]." And he never testified that Pietrzak ever "told [him he] . . . should be worried." In the shadow of his hearing testimony, VanderVoort's initial claims of mistreatment mostly disappear.

We doubt that the district court's findings would justify an HRO even if they were all supported by evidence, but we are certain that the supported findings cannot validate the order. We review for an abuse of discretion the district court's decision to issue an HRO. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). A district court may issue an HRO if it finds "reasonable grounds to believe" that harassment occurred. Minn. Stat. § 609.748, subd. 5(3) (2020). The supported findings here simply do not establish that Pietrzak engaged in "repeated incidents of intrusive or unwanted acts, words, or gestures" that had any "substantial adverse effect or [were] intended to have a substantial adverse

effect on" VanderVoort's "safety, security, or privacy." *See* Minn. Stat. § 609.748, subd. 1(a)(1). The district court found, and the record supports the finding, that "six to seven times" spanning from June to August 2021 Pietrzak referred to VanderVoort in derogatory fashion, using the words, "f--king idiot," "stupid," or a slur related to homosexuality. None of these terms is respectful or courteous, or even civil. Their use certainly supports VanderVoort's testimony that they made him feel demeaned. But they are more accurately described as "inappropriate or argumentative" statements, which are not harassment under the statute. *Kush*, 683 N.W.2d at 844. Their use does not indicate any substantial adverse effect on VanderVoort's safety, security, or privacy. The district court also found, and VanderVoort's testimony supports the finding, that "a few different times" he saw Pietrzak grabbing his own crotch and nodding, a gesture VanderVoort described as "gross." Again, crude? Yes. Offensive? Likely. Juvenile? Definitely. But intending to or having a substantial adverse effect on VanderVoort's safety, security, or privacy? No.

We of course do not condone the conduct alleged. Nor do we suggest that a correctional officer's conduct in a prison setting can never constitute harassment warranting an HRO. We hold only that those factual findings that are supported by evidence in this case fall short of the statutory standard. The district court therefore abused its discretion by issuing the HRO.

Reversed.