STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1395

Todd Brian Kerber,
Respondent,

vs.

Anna Renee McKinnon,
Appellant.

Filed June 26, 2023
Affirmed
Larson, Judge

Anoka County District Court
File No. 02-CV-22-3549

Todd Kerber, Monticello, Minnesota (pro se respondent)

Nathan W. Nelson, Steven V. Rose, Mitchell D. Cervenka, Virtus Law, PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Gaïtas, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Anna Renee McKinnon contends the district court abused its discretion when it granted a petition for a harassment restraining order (HRO) in favor of respondent Todd Brian Kerber. We affirm.

FACTS

McKinnon and her former partner Kerber each petitioned the district court for an HRO. The district court issued an ex parte HRO granting temporary relief for Kerber. McKinnon requested a hearing.

At a hearing on both petitions, the district court heard testimony from McKinnon and Kerber, and considered the submitted evidence. The district court granted HROs against both McKinnon and Kerber.[1] With regard to McKinnon, the district court used a form order and found that she (1) physically assaulted; (2) made threats to; and (3) used social media to harass Kerber. The district court further determined that McKinnon's harassment "has or [was] intended to have a substantial adverse effect on [Kerber]'s safety, security, or privacy." The district court ordered McKinnon not to harass Kerber through direct or indirect contact and prohibited McKinnon from being within five blocks of Kerber's residence for one year.

McKinnon appeals.[2]

DECISION

McKinnon challenges the district court's order granting an HRO against McKinnon. We review a district court's decision to issue an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). "A district court abuses its discretion

[1] The HRO against Kerber is not part of the record on appeal but is referenced in McKinnon's brief.

[2] Kerber did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03, which provides that if a respondent fails to file a brief, then the case shall be determined on its merits.

by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). We will not set aside a district court's findings of fact unless they are clearly erroneous, given the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01; *see also In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (discussing clear-error review and noting that it is "a review of the record to confirm that evidence exists to support the decision"). But we will reverse an HRO if it is not supported by sufficient evidence. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004).

McKinnon raises two arguments on appeal: that the district court abused its discretion when it (1) used a form order and failed to make specific findings and (2) entered an HRO unsupported by the record. We address each argument in turn below.

I.

McKinnon argues the district court abused its discretion when it used a form order and failed to make specific findings to support granting Kerber's petition for an HRO. When issuing an HRO, the district court must make findings specially. *See Mechtel v. Mechtel*, 528 N.W.2d 916, 920-21 (Minn. App. 1995) (requiring written or oral findings for an order for protection); *Witchell v. Witchell*, 606 N.W.2d 730, 731-32 (Minn. App. 2000) (citing *Mechtel* in an HRO appeal); Minn. R. Civ. P. 52.01 (stating "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon and direct the entry of the appropriate judgment"). A district court must state such findings "clearly and specifically" in order to "permit

meaningful review upon appeal." *Crowley Co. v. Metro. Airports Comm'n*, 394 N.W.2d 542, 545 (Minn. App. 1986) (quotation omitted). However, a general exception exists "where the record is reasonably clear and the facts [are] not seriously disputed." *Id.* (quotation omitted). And the HRO statute creates no specific requirement regarding the specificity of a district court's findings. *See* Minn. Stat. § 609.748, subd. 5 (2022).

Here, the district court used a form order to grant Kerber's petition for an HRO. The form order contained seventeen check boxes with various pre-written findings. If the district court checked a box next to an item, the district court found "reasonable grounds to believe that Respondent ha[d] engaged" in that specific type of harassment. *See* Minn. Stat. § 609.748, subd. 4(b) (2022) (articulating the legal standard the form recites). Regarding McKinnon, the district court checked boxes indicating McKinnon physically or sexually assaulted Kerber, made threats to Kerber, and used social media to harass Kerber. The district court did not make any other findings, either in its order or orally at the hearing.

McKinnon asserts that the district court committed reversible error when it used the form order because the district court failed to identify "how the evidence provides reasonable grounds to believe [McKinnon] engaged in harassment." McKinnon's argument fails for three reasons.

First, McKinnon likely forfeited this argument.[3] When a party alleges the district court has failed to make adequate findings, "the burden is on the parties to alert the [district]

[3] We observe that an HRO proceeding is not a typical civil matter. Instead, it is considered a "special proceeding." *Fiduciary Found., LLC ex rel. Rothfusz v. Brown*, 834 N.W.2d 756, 761 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). But we have applied this legal principle to an HRO proceeding in at least one nonprecedential decision. *See*

court by a motion for amended finding[s] under Minn. R. Civ. P. 52.02." *Frank v. Ill. Farmers Ins. Co.*, 336 N.W.2d 307, 311 (Minn. 1983). The purpose of this requirement is two-fold: (1) to "eliminate the need for appellate review;" and (2) "if appellate review is sought," to "facilitate development of critical aspects of the record." *Alpha Real Est. Co. v. Delta Dental Plan*, 664 N.W.2d 303, 309 (Minn. 2003) (quotation omitted). When an appellant fails to file a motion for amended findings, appellant's argument that the district court made inadequate findings is forfeited. *See Anderson v. Peterson's N. Branch Mill, Inc.*, 503 N.W.2d 517, 518-19 (Minn. App. 1993) (declining to review adequacy of findings and conclusions of law because appellant did not move for amended findings); *Pac. Mut. Door Co. v. James*, 465 N.W.2d 696, 701 (Minn. App. 1991) (same); *Love v. Amsler*, 441 N.W.2d 555, 560 (Minn. App. 1989) (same), *rev. denied* (Minn. Aug. 15, 1989). Here, McKinnon's failure to file a motion for amended findings likely forfeited the issue on appeal. *See Pac. Mut. Door Co.*, 465 and N.W.2d at 701.

Second, McKinnon cites no legal authority to support her claim. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

Branscum v. Branscum, No. A22-1493, 2023 WL 2961771, at *2 (Minn. App. Apr. 17, 2023); *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding authority except as law of the case, res judicata or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.").

Finally, based on our independent review of the record, we discern no error. Although more specific findings would certainly have been helpful on appeal, the record adequately supports the district court's findings. *See Crowley Co.*, 394 N.W.2d at 545.

II.

McKinnon contends the district court "abused its discretion by entering [an HRO] unsupported by the evidence." The district court may grant an HRO if "the court finds . . . that there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3). "Harassment" includes "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) (2022). A harassment determination "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). This 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.

Here, the district court found reasonable grounds to believe McKinnon engaged in "repeated incidents of intrusive or unwanted acts, words, or gestures" when she used social media to harass Kerber.[4] *See* Minn. Stat. § 609.748, subd. 1(a)(1).

At the hearing, the district court heard testimony from Kerber that McKinnon "was going through [his] phone, accusing [him] of cheating on her." According to Kerber, McKinnon also installed a "a tracking app[5] on [his] phone," allowing McKinnon to follow him. Kerber stated he "knew about [the tracking app] initially and [he] told [McKinnon] to take it off." But McKinnon "kept it on." Kerber's attempts to remove the "tracking app" from his phone were unsuccessful, and he had not yet purchased a new phone.

According to Kerber's testimony, while McKinnon "ha[d] access to [his] phone, she deleted apps, deleted contacts, deleted pictures, [and] deleted people she did not want [him] talking to." Kerber also testified that McKinnon "took pictures of [his] phone and contacted [his] friends," pretending to be Kerber on social media. Specifically, Kerber identified four instances in which McKinnon contacted others using his social media. McKinnon's testimony corroborated several of these instances. And the district court implicitly found Kerber's testimony credible. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

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[4] Because the record supports the district court's determination that McKinnon repeatedly used social media to harass Kerber, we need not address the other two grounds relied upon by the district court. *See Kenney*, 963 N.W.2d at 221-23.

[5] During his testimony, Kerber indicated that "the tracking app" was related to one of his social-media accounts.

The record contains sufficient evidence to support the district court's determination that McKinnon's conduct amounted to "repeated incidents of intrusive or unwanted acts, words, or gestures." *See* Minn. Stat. § 609.748, subd. 1(a)(1). In total, Kerber's testimony described four incidents where McKinnon used social media to, or intended to, harass Kerber. *See Johnson*, 755 N.W.2d at 766 (requiring more than a single "incident of an intrusive or unwanted act . . . to prove harassment"); *Kush*, 683 N.W.2d at 844 (affirming harassment determination when record showed two specific instances and other general harassing conduct taken together formed repeated incidents).

Further, the record supports the district court's determination that McKinnon's harassment "has or is intended to have a substantial adverse effect on [Kerber]'s safety, security, or privacy." Kerber testified McKinnon's conduct caused him to be "afraid" that McKinnon will continue to harass him using social media. McKinnon's conduct was objectively unreasonable and caused an objectively reasonable belief on Kerber's part that his privacy was threatened. *See Dunham*, 708 N.W.2d at 567. McKinnon's 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. The record, therefore, contains sufficient evidence to support the district court's determination that McKinnon's conduct had a substantial adverse effect on Kerber's safety, security, or privacy.

For these reasons, the district court did not abuse its discretion when it granted Kerber's petition for an HRO against McKinnon.

Affirmed.