STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0624

In the Matter of:
Casey McDougall,
Respondent,

vs.

Joseph Mark Plumer, Jr.,
Appellant.

Filed January 22, 2024
Affirmed
Worke, Judge

Beltrami County District Court
File No. 04-CV-23-219

Darla M. Nubson, Nubson Law Office, PLLC, Grand Rapids, Minnesota (for respondent)

Joseph Plumer, Jr., Bemidji, Minnesota (pro se appellant)

Considered and decided by Ede, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

In this direct appeal from the district court's grant of a harassment restraining order (HRO), appellant argues that (1) the district court used an incorrect definition of harassment, and (2) the record does not support the district court's findings. We affirm.

FACTS

In 2022, appellant Joseph M. Plumer Jr. and his wife began dissolution proceedings. Due to the contentious nature of these proceedings, Plumer's wife had to take a formal leave of absence from a post-doctoral program in which she was enrolled in New Mexico. Respondent Casey McDougall heads the degree program.

Plumer began to contact faculty and staff at the school and alleged that McDougall was in an inappropriate relationship with his wife. As a result, the school initiated an internal ethics complaint that was completed in December 2022—McDougall was cleared of any ethical violations.

On January 11, 2023, Plumer sent an email to multiple faculty members and the dean of students. The email alleged that McDougall was in a sexual relationship with his wife, McDougall had shown "predator like" behavior, and McDougall came to Minnesota to see Plumer's children. Plumer concluded the email by stating that he will have his attorney contact them and "potentially" reach out to media outlets if he does not get a response from the school regarding his allegations against McDougall.

The district court granted McDougall an ex parte restraining order against Plumer on January 20, 2023. The district court found that Plumer (1) made harassing phone calls or sent harassing messages to McDougall; (2) made threats to McDougall; and (3) threatened to contact media outlets and faculty with false accusations. Plumer requested an HRO hearing.

At a March 2023 hearing, the district court considered evidence and heard testimony from McDougall and Plumer. The district court granted an HRO in favor of McDougall.

The district court used a form order and found that Plumer (1) followed, monitored, or pursued McDougall; (2) called McDougall a "child predator"; and (3) threatened to contact media outlets and faculty with false accusations. The HRO prohibited Plumer from contacting McDougall, the school, or any media outlets. Plumer was also prohibited from being within 1,000 feet of McDougall's home or place of business. This appeal followed.

DECISION

Plumer challenges the district court's order granting the HRO in favor of McDougall. He argues that the district court (1) applied the incorrect definition of "harassment" as a matter of law, and (2) abused its discretion in citing other grounds to support the HRO. We are not persuaded.

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 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 appellate courts will reverse an HRO if it is not supported by sufficient evidence. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004).

Plumer argues that the district court applied the incorrect definition of harassment under Minn. Stat. § 609.748, subd. 1(a)(1) (2022), when it found that he "[f]ollowed, monitored, or pursued" McDougall, as this language is from an unrelated stalking statute. *See* Minn. Stat. § 609.749, subd. 2(c)(2) (2022). We disagree.

Under Minn. Stat. § 609.748, subd. 2(a) (2022), "[a] person who is a victim of harassment . . . may seek a restraining order from the district court." A district court may issue an HRO 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) (2022). Section 609.748 defines "[h]arassment" as:

> a single incident of physical or sexual assault, a single incident of harassment under section 609.749, subdivision 2[(c)], clause (8),[1] a single incident of nonconsensual dissemination of private sexual images . . . , or 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).

Plumer contends that the district court applied the definition of harassment in another statute, Minn. Stat. § 609.749 (2022), which criminalizes certain harassment offenses. This section states that a person commits harassment if the person "follows, monitors, or pursues another." Minn. Stat. § 609.749, subd. 2(c)(2). Plumer argues that the HRO form shows that the district court relied on the language of the incorrect statute,

[1] Minn. Stat. § 609.749, subd. 2(c)(8) (2022), states that a person has committed "harassment" if the person "uses another's personal information, without consent, to invite, encourage, or solicit a third party to engage in a sexual act with the person."

Minn. Stat. § 609.749, subd. 2(c)(2), to find harassment.[2] He points out that the district court checked a box on that form order indicating that he "[f]ollowed, monitored, or pursued" McDougall. Plumer contends that because these terms are only included in the criminal statute and are not included in Minn. Stat. § 609.748, subd. 1(a)(1), the district court erroneously applied the incorrect definition of harassment.

Whether the definition of harassment in section 609.748, subdivision 1(a)(1), could include the conduct described in section 609.749, subdivision 2(c)(2)—following, monitoring, or pursuing another—is a question of statutory interpretation, which we review de novo. *Peterson*, 755 N.W.2d at 761. The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature." *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (quotations omitted). In discerning the legislature's intent, the "plain language of the statute is [the] best guide." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019). When the meaning of a statute is unambiguous, the plain language controls. *State v. Boecker*, 893 N.W.2d 348, 351 (Minn. 2017).

We conclude that the acts of following, monitoring, or pursuing could constitute harassment under the definition of that term in section 609.748, subdivision 1(a)(1). Under that subdivision, 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." Minn. Stat. § 609.748, subd. 1(a)(1). Regarding the "[f]ollowed, monitored, or pursued" language used by the district

[2] We note that the district court used a form order containing various boxes that it could check to identify any harassing conduct it determined to be present.

court in the HRO, the record shows that Plumer tracked McDougall's public online-payment history. Additionally, while the record supports a finding that Plumer was incorrect about McDougall's whereabouts in December 2022, the district court could have relied upon Plumer's claims that McDougall was in Minnesota in December and in Florida with Plumer's wife to support a finding of intent to "follow, monitor, or pursue."

While "follows, monitors, or pursues another" is found in the language of section 609.749, it is reasonable to conclude that the acts of following, monitoring, or pursuing could be "repeated incidents of intrusive or unwanted acts, words or gestures" that substantially impact "the safety, security, or privacy of another." Minn. Stat. § 609.748, subd. 1(a)(1). This is consistent with the purpose of the HRO statute as laid out in *Kush v. Mathison*:

> We do not suggest that [the harassment statute] mandates "Minnesota nice" or some artificial code of civility, as appellant contends. The legislature has determined that certain conduct is sufficiently offensive and disturbing that it is not tolerable in civilized society. Individuals are free to express outrage . . . . But there are limits to such expressions in order to keep peace in the community . . . . To this end, the harassment laws place carefully limited restraints on individuals whose conduct 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 845-46 (quotations omitted).

Because the plain language of Minn. Stat. § 609.748, subd. 1(a)(1), could encompass the acts of following, monitoring, or pursuing, Minn. Stat. § 609.749,

subd. 2(c)(2), the district court did not rely on the incorrect definition of harassment. Therefore, Plumer's legal challenge to the HRO fails.

Plumer argues that the district court abused its discretion when it granted the HRO findings that were not supported by the record. We disagree. "A district court abuses its discretion 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*, 975 N.W.2d at 506.

A district court may grant an HRO when it "finds at the hearing that there are reasonable grounds to believe that the respondent [to the petition for an HRO] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2022).

Here, a hearing was held, during which the district court heard testimony and received other evidence. The district court found McDougall's testimony credible. *See* Minn. R. Civ. P. 52.01; *see also Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008) (stating that appellate courts give "deference to the district court's opportunity to evaluate witness credibility"). The district court determined that Plumer engaged in repeated intrusive acts that had a substantial adverse effect on McDougall's safety, security, and privacy. Those acts included: following, monitoring, or pursuing McDougall; calling McDougall a "child predator"; and threatening to contact media outlets and the school's faculty with false accusations regarding McDougall.

The record supports each of the district court's findings regarding Plumer's conduct. Therefore, the district court did not abuse its discretion in determining that this conduct amounted to harassment; thus, the court did not abuse its discretion in issuing the HRO.

Affirmed.