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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1369**

Julie Ann Dillon
individually and o/b/o Matthew Sucik, petitioner,
Respondent,

vs.

Richard Burton,
Appellant.

**Filed May 6, 2013
Reversed and remanded
Ross, Judge**

Crow Wing County District Court
File No. 18-FA-12-2322

Julie Ann Dillon, Brainerd, Minnesota (pro se respondent)

Kristian L. Oyen, Savage, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

Julie Dillon filed a petition for a harassment restraining order against her former boyfriend, Richard Burton. After a hearing, the district court issued the order against Burton for two years. Burton appeals from the order, arguing that he did not receive a full

hearing. Because Burton was not afforded the opportunity to cross-examine Dillon or present witnesses in opposition to the motion, we reverse and remand to the district court for a hearing as required by Minnesota Statutes section 609.748.

FACTS

Julie Dillon and Richard Burton had an on-and-off relationship from 2006 to 2011. It was in the off mode in late January 2012, when Dillon first suspected that Burton was following her. Dillon petitioned for an order for protection in May 2012, asserting that Burton had been stalking her.

The district court began a hearing on the petition and quickly decided that an order for protection was improper because Dillon acknowledged that Burton had not physically harmed or threatened her. With the agreement of both parties, the district court allowed the petition to be amended, and it proceeded with a hearing to consider a harassment restraining order instead.

The district court first questioned Dillon. Dillon testified that soon after the parties ended their romantic relationship, Burton followed her into bars and drove past her home. She also testified that Burton photographed her truck parked outside of someone else's home late at night and sent the image to her and her daughter attached to a text message. She provided evidence that Burton sent her dozens of text messages that same night indicating that he had driven by the house and accusing her of having a relationship with the homeowner. This all occurred in January 2012. Dillon testified that several months passed without event until late April when she received word from a mutual friend that

Burton had been watching her. She said that she sent a text message to Burton telling him to leave her alone but that he continued stalking her.

When Dillon finished testifying, the district court did not offer Burton an opportunity to cross-examine her. Instead he asked Dillon, “[D]id you have any other witnesses that you wished to have testify?” Dillon answered that two other witnesses would testify.

The district court then said, “Before we do that, I’m going to see if – I may come back to that. Do you wish to provide any testimony in this matter, Mr. Burton?”

The district court then questioned Burton. Burton admitted to photographing Dillon’s truck in January 2012 and sending the image to her in a text message. The court asked Burton if he had evidence he wished to submit. Burton replied affirmatively and provided a stack of emails and maps. When the district court finished questioning Burton, it did not ask him if he had any further testimony or any witnesses to call. But indeed, Burton had been accompanied by several witnesses who took time off work to testify. The district court instead declared the proceeding over:

Okay. I’ve heard enough, and I’m going to be able to make my ruling here at this point. And I’m going to issue a harassment restraining order. I don’t need to hear any more testimony. I think I’ve got the gist of what’s going on here. I’m going to issue an order.

The district court judge left the courtroom and returned, stating that he recognized that Burton had intended to provide additional evidence and testimony but that he intended to rule against him without hearing any of it:

I have weighed all the evidence, as indicated before. I know that there was some evidence and testimony that maybe both sides, and maybe you in particular, Mr. Burton, wanted to introduce, but I'm confident that I've heard enough to know where this is going and to have a handle on this.

The district court found reasonable grounds to conclude that Burton had harassed Dillon by taking and sending the image of her truck and by continuing to stalk her after she sent him a text message in April demanding that he leave her alone. The district court issued an order restraining Burton from contacting Dillon for two years.

Burton appeals.

DECISION

We review harassment restraining orders for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). The district court may grant a harassment restraining order if it finds after a hearing that “there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a)(3) (2010). If requested, a hearing is required to determine whether a harassment restraining order is needed. Minn. Stat. 609.748, subd. 3 (2010).

Burton argues that he did not receive a true hearing because the district court did not give him an opportunity to cross-examine Dillon or to present witnesses in his defense. We have held that the hearing requirement for a harassment restraining order includes the right to examine and cross-examine witnesses and to produce documents. *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995). Because the district court did not afford Burton an opportunity to present witnesses on his behalf or to cross-

examine Dillon, Burton did not receive an adequate hearing before the district court issued the order restraining his activities.

The only reason the district court gave for truncating the hearing was, “I’ve heard enough.” But the court was aware that the only evidence it had received from Dillon had been untested by cross-examination and it knew that Burton had more evidence to provide through other witnesses. It also had no reason to suppose that Burton had nothing relevant to say on his own behalf, since the court ended his presentation of evidence without asking whether he was finished testifying.

We recognize that the right to present witnesses is not unlimited. *See State v. Quick*, 659 N.W.2d 701, 713 (Minn. 2003). The district court appears to have predicted that additional testimony would include no new evidence and would not materially qualify the already-presented evidence so as to improve the court’s understanding and inform its judgment. This prediction might have proven true. But on this record, it is not certain that it would have, and the district court had insufficient ground to assume so.

We do not address whether the record supports the district court’s finding that Burton engaged in repeated incidents of harassment so as to support the order because, even if it does, the record is incomplete. Burton did not have an opportunity to cross-examine Dillon on her allegations, or to complete his testimony, or to present any witnesses in his defense. We therefore reverse and remand for a new hearing that meets the statute’s express and implied due process requirements.

Reversed and remanded.