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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1092**

Barry Rokusek o/b/o Julianna Rokusek, petitioner,
Respondent,

vs.

Alexander Brown,
Appellant.

**Filed December 30, 2013
Reversed and remanded
Hooten, Judge**

Olmsted County District Court
File No. 55-CV-13-2740

David L. Liebow, Restovich Braun & Associates, Rochester, Minnesota (for respondent)

James McGeeney, Doda & McGeeney, P.A., Rochester, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Smith,
Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's grant of a harassment restraining order (HRO), arguing that (1) there was insufficient evidence to support the district court's finding that he engaged in harassment, and (2) the district court did not afford him a full

hearing. Because we conclude that appellant was denied his right to call witnesses, we reverse and remand for a new hearing.

FACTS

On April 24, 2013, respondent Barry Rokusek filed an affidavit and petition for an HRO on behalf of his daughter, respondent Julianna Rokusek, against Julianna's ex-boyfriend, appellant Alexander Brown. The district court held a hearing regarding the petition on May 1. At the beginning of the hearing, the district court stated, "I'm going to question [Julianna] first and then [Brown], and then we're going to hear from witnesses if I tolerate that." The district court then asked each of the attorneys if they planned to call any witnesses, and Brown's attorney provided the names of three rebuttal witnesses. The district court responded: "First, I'm going to talk to Julianna. Then I'm going to talk to [Brown]. And then I'll have you tell me what you think the other witnesses are going to say, and then I'll decide if I want to even hear from them."

Julianna testified that she is in eleventh grade and that she dated Brown, who attended the same high school, for about a year and a half beginning in her freshman year of high school. Julianna testified that several incidents occurred after she broke up with Brown that caused her to feel harassed by Brown. Julianna testified that Brown shoved her into a wall in the band locker room after a pep rally in February 2013. She was walking to her band locker to put away her saxophone when she was slammed into the wall, hitting her shoulder and her saxophone against the wall. She did not actually see Brown shove her, but when she looked up she saw Brown walking directly past her. Julianna also testified that she sometimes saw Brown positioned outside her classrooms

and that he confronted one of her friends while Julianna was walking with that friend outside of the high school in April 2013.

Brown testified that he did not recall bumping into Julianna in the band locker room and denied shoving her. Brown claimed that at the time of the alleged incident there were numerous students, many of whom were pushing and shoving, in the band locker room. Brown also testified that he did not purposely stand outside Julianna's classroom to look at her; instead, he walked his friend to her class, which happened to also be Julianna's class. He acknowledged confronting Julianna's friend outside the school while she was with Julianna.

At the conclusion of Brown's testimony, the district court stated, "I think I'm just going to shut this down. . . . I don't want to hear any more testimony. I got all the testimony I can possibly stand. I'm going to give each attorney exactly two minutes to make a closing statement."

The district court granted Julianna's petition for an HRO, finding that there were reasonable grounds to believe that Brown engaged in harassment of Julianna by shoving her into a wall after a pep rally and by following, pursuing, or stalking Julianna in February 2013 "as set forth in the petition." Finally, the district court found that the harassment had or was intended to have a substantial adverse effect on Julianna's safety, security, or privacy. The district court ordered the HRO to remain in effect until May 1, 2014. This appeal follows.

DECISION

In a harassment proceeding, the district court must order a hearing if either the petitioner or the respondent requests one. Minn. Stat. § 609.748, subs. 3(a), 4(e) (2012). If the HRO will remain in effect for longer than 14 days, the hearing “includes the right to present and cross-examine witnesses, to produce documents, and to have the case decided pursuant to the findings required” under the statute. *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995).

Brown contends that the district court did not afford him a fair hearing because it denied him the right to call rebuttal witnesses. Brown further claims that such denial was particularly prejudicial in light of the inconsistent testimony of the parties, which made their credibility a central issue in the hearing. We agree. The record establishes that the district court told Brown’s attorney he would have the opportunity to present an offer of proof regarding the content of his rebuttal witnesses’ testimony but then did not allow him to do so.¹ At the beginning of the hearing, Brown’s attorney specifically named three individuals whom he planned to call as rebuttal witnesses and the district court told Brown’s attorney that it would allow him to describe the testimony of those witnesses after Brown and Julianna testified. But, at the conclusion of Brown’s testimony, the district court stated that it was “just going to shut [the hearing] down” and that it did not “want to hear any more testimony.” The district court then instructed the attorneys to

¹ This case is distinguishable from that where a party is allowed to submit an offer of proof and then, based upon the district court’s evaluation of the relevancy of such proffered testimony, the district court determines that the testimony is irrelevant. In that situation, the district court’s refusal to allow such testimony is reviewed for an abuse of discretion. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46 (Minn. 1997)

begin their closing arguments, which were limited to “exactly two minutes” each. Because the district court did not provide Brown’s attorney with an opportunity to make an offer of proof regarding his witness’ testimony or allow him to call his rebuttal witnesses, we conclude that the district court denied Brown his right to a full and fair hearing. As a result of this conclusion, we need not consider whether sufficient evidence supports the district court’s finding that Brown engaged in harassment. Accordingly, we reverse and remand to the district court for a new hearing.

Reversed and remanded.