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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1749**

Tenneh Johnson,
individually and o/b/o
Walker Methodist Health Center, Inc., et al., petitioners,
Respondents,

vs.

Beverley Jean Berg,
Appellant.

Filed August 26, 2008

Affirmed

Worke, Judge

Hennepin County District Court

File No. 27-CV-07-2177

Amy L. Helsene, Larkin Hoffman Daly & Lindgren, Ltd., 1500 Wells Fargo Plaza, 7900
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appellant)

Considered and decided by Worke, Presiding Judge; Lansing, Judge; and
Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WORKE, Judge

On appeal from the district court's grant of a harassment restraining order, appellant argues that (1) the record does not support the initial grant of a temporary restraining order; (2) the record does not support the harassment restraining order; (3) the conduct on which the harassment restraining order was based is protected by state and federal law; and (4) she was not afforded a full and fair hearing. We affirm.

DECISION

We review a district court's issuance of a harassment restraining order (HRO) for an abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000). A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). But we will reverse the issuance of a restraining order if it is not supported by sufficient evidence. *Bjergum v. Bjergum*, 392 N.W.2d 604, 606-07 (Minn. App. 1986).

Temporary Restraining Order

Appellant Beverley Jean Berg first argues that the district court abused its discretion by issuing a temporary harassment restraining order despite the failure of respondents' Tenneh Johnson, individually and o/b/o Walker Methodist Health Center, Inc., et al., to establish an immediate and present danger of harassment. *See* Minn. Stat.

§ 609.748, subd. 4(a) (2006) (stating that court may issue temporary restraining order in a case alleging harassment under subdivision 1(a)(1) provided petition “further allege[s] an immediate and present danger of harassment”). While it appears that the petition does not allege an immediate and present danger of harassment, because the temporary restraining order has lapsed, any challenge to its legality is moot and we need not address this aspect of appellant’s argument. See *In re Application of Minnegasco*, 565 N.W.2d 706, 710 (Minn. 1997) (“[T]he general rule is that when, pending appeal, an event occurs that makes a decision on the merits unnecessary or an award of effective relief impossible, the appeal should be dismissed as moot.”).

Sufficiency of Evidence

Appellant also argues that the record is insufficient to support the HRO. A district court may issue a HRO if it finds, inter alia, that “there are reasonable grounds to believe that [a person] has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a)(3) (2006). 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, regardless of the relationship between the actor and the intended target[.]” *Id.*, subd. 1(a)(1) (2006). In granting the HRO petition, the district court found that appellant engaged in repeated incidents of intrusive or unwanted acts, words or gestures that have had a substantial adverse effect on the safety, security, or privacy of another.” The incidents supporting this finding were that appellant (1) repeatedly sent harassing letters of complaint concerning the same topic to Walker Methodist and repeatedly made harassing phone calls to staff, (2) verbally abused

Johnson on at least six occasions, and (3) interfered with the nursing care of other residents at Walker Methodist.

The district court findings are supported by sufficient evidence. Appellant's mother was admitted to Walker Methodist on October 24, 2006. From November 2006 to January 2007, appellant repeatedly sent harassing letters, sometimes several letters per day, and made harassing phone calls to Walker Methodist complaining about her mother's care. Appellant also had several altercations with Johnson. In early January 2007, appellant brought in a cake to share with the residents on her mother's floor. When Johnson saw appellant handing out the cake, Johnson advised appellant that due to the various diet and health conditions of the residents, it would be best if a nurse distributed the cake to those residents whose diet did not restrict such foods. Appellant argued that Johnson was the first nurse to ever raise an issue with her about sharing food with residents. Appellant then asked a nursing assistant if a certain resident was diabetic. When the nursing assistant responded "yes," Johnson advised the nursing assistant not to divulge confidential patient information. Appellant then began looking at residents' meal tickets to determine who was diabetic. Appellant disputes Johnson's claim that she looked at several meal tickets; however, appellant concedes that she looked at one meal ticket. Johnson then informed appellant that she would have to notify her supervisor of the incident. Appellant became visibly angry, pacing up and down the hallway, demanding that a supervisor come immediately to deal with the issue.

On another occasion, Johnson answered the phone when appellant called the nursing station. Appellant demanded that her mother's case plan be reviewed regarding

whether a staff member had complied with the requirement that her mother be taken to the bathroom by 7:00 a.m. that morning. Johnson told appellant that she could not review the case plan right then but that she would look into it and call appellant back. Appellant began to yell at Johnson, repeatedly demanding that she review the case plan at that time. Johnson eventually terminated the call. Further, on the day appellant was escorted from Walker Methodist by security, appellant approached Johnson, waving paperwork in her face, demanding that she read it. Johnson stated that she was fearful for her safety due to appellant's agitated state.

While appellant argues that she was merely advocating for her mother's care, she did so in a harassing manner. The district court found that respondents' testimony was more credible than that of appellant. *See* Minn. R. Civ. P. 52.01. Because the findings are supported by sufficient evidence, the district court did not abuse its discretion in issuing the HRO. It should also be noted that the HRO allows appellant to continue to see her mother every day, as well as meet with a Walker Methodist representative every three months in order to review her access schedule. The HRO also provides appellant with an outlet for her concerns regarding her mother's care-related issues at Walker Methodist.

State and Federal Law Protections

Appellant also argues that the conduct on which the HRO is based is protected by state and federal law. A *resident* at a long-term care facility has the right to access by an immediate family member. 42 C.F.R. § 483.10(j)(1)(vii) (2008). Further, under Minnesota law, "*residents* may associate and communicate privately with persons of their

choice.” Minn. Stat. § 144.651, subd. 21 (2006) (emphasis added). The express intent of the statute is to “promote the interests and well being of the *patients* and *residents* of health care facilities.” *Id.*, subd. 1 (2006) (emphasis added). “The statute accords certain rights to *patients* and *residents* of nursing facilities” and those rights do not extend to a third party who is not an appointed guardian. *State v. Hoyt*, 304 N.W.2d 884, 888 (Minn. 1981) (emphasis added). Because appellant is not a patient, resident, or an appointed legal guardian of her mother, the protections under this statute and regulation are not applicable to her.

Fair Hearing

Finally, appellant argues that she was not afforded a full and fair hearing; however, appellant failed to provide this court with a copy of the hearing transcript. As a general rule, appellant bears the burden of providing an adequate record. *Mesenbourg v. Mesenbourg*, 538 N.W.2d 489, 494 (Minn. App. 1995). When a transcript is not provided on appeal, this court’s task is “limited to determining whether the [district] court’s findings of fact support its conclusions of law.” *Amer. Family Life Ins. Co. v. Noruk*, 528 N.W.2d 921, 925 (Minn. App. 1995), review denied (Minn. Apr. 27, 1995). The clerk of appellate courts confirmed that appellant’s counsel was provided a copy of the transcript but it was not ordered for appeal purposes. Despite repeated requests on this court’s behalf, counsel still has not obtained the required original and one copy of the transcript for inclusion in the record. Without a transcript, we cannot review the issue of whether appellant received a fair hearing, and the decision below must be affirmed.

Affirmed.