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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-587**

Steps of Success Homes, LLC on behalf of
the current residents of Steps of Success Homes
and residents who have left Steps of Success Homes
since October 8, 2008, petitioner,
Respondent,

vs.

Pamela Jean Dowell,
Appellant.

**Filed December 29, 2009
Reversed
Johnson, Judge**

Itasca County District Court
File No. 31-CV-08-3597

Scott J. Strouts, 276 Baker Building, 706 Second Avenue South, Minneapolis, MN
55402; and

Larry Rapoport, 11620 Vista Drive, Minnetonka, MN 55343 (for respondent)

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Considered and decided by Stoneburner, Presiding Judge; Johnson, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

For seven months in 2008, Pamela Jean Dowell was employed by Steps of Success Homes, LLC (Steps), which operates a foster home for teen-aged girls in Grand Rapids. After Dowell resigned her position, she contacted two residents of the foster home. In response, Steps sought and obtained a harassment restraining order (HRO) that forbids Dowell from contacting the facility and its employees and residents for two years. On appeal, Dowell argues that Steps did not have standing to petition for an HRO on behalf of its residents and that she did not engage in conduct that constitutes harassment. We conclude that Steps had standing only for the limited purpose of restraining Dowell from engaging in harassment against the company and that Steps failed to prove that Dowell engaged in harassment of Steps. Therefore, we reverse.

FACTS

Steps operates a residential facility in Grand Rapids that is licensed by the state of Minnesota. At the time of the district court proceedings in this case, there were seven residents of Steps's Grand Rapids facility: six girls, ranging in age from 12 to 17, and one 18-year-old woman.

In March 2008, Steps hired Dowell to be a direct-care staff person. At the beginning of her employment, Dowell was given a copy of Steps's policy entitled "Former Resident / Former Staff Contact." The policy states that Steps staff members should not contact former residents of the foster home. The policy also states, "For one year following the date of termination, former staff wishing to contact current or past

residents must obtain written approval from the Directors and the resident/former resident's parent [or] guardian.”

Dowell resigned her position on October 8, 2008. One day later, Dowell sent a message to S.R., a minor resident of the Steps home, through a social-networking website to which both belonged. In her message, Dowell told S.R. that she had quit her job and that she would miss S.R. and the other residents. Dowell also told S.R. not to tell the employees of the home that she had been in contact because it was prohibited by Steps's policy but that S.R. could maintain contact with Dowell if she had the permission of her guardian.

On October 16, 2008, a Steps employee was transporting an 18-year-old resident, C.C., to a Walmart store, where C.C. was employed as a cashier. Dowell's vehicle followed the Steps vehicle into the parking lot. After C.C. exited the Steps vehicle, she stopped and spoke with Dowell through an open window of Dowell's vehicle. Dowell then shopped inside Walmart and paid for her purchases in C.C.'s checkout lane, where the two women had another conversation.

The next day, Kim Jahn, the president of Steps, filed a petition in the district court for an HRO. The petition states that it was filed on behalf of Steps and its seven residents: S.R., C.C., I.T., J.F., A.C., L.F., and K.K. The petition alleged that Dowell had sent an electronic message to S.R. and had followed C.C. into a Walmart parking lot. The district court issued an *ex parte* order the same day and set the matter for a hearing on the request for an HRO.

On December 5, 2008, Dowell filed a motion *in limine* in which she argued that Jahn did not have standing to petition for an HRO on behalf of the residents of the Steps home because she is not the legal guardian of the residents. In response, Jahn argued that Steps has standing because it is a corporation entitled by statute to petition for an HRO. On January 16, 2008, at the hearing on the petition for an HRO, the district court permitted Steps to substitute for Jahn as petitioner and ruled that Steps has standing to pursue an HRO.

At the hearing on the petition, the district court received testimony from five witnesses, including Dowell. On February 9, 2009, the district court issued an order containing its findings of fact, conclusions of law, and order. The district court found that Dowell had engaged in harassment by contacting C.C. at her workplace and by contacting S.R. via the social-networking website. The district court granted the petition and issued an order that restrains Dowell, for two years, from contacting, either directly or indirectly, “Steps of Success Homes, LLC, its employees while engaged in their job duties, former residents who have left Steps of Success Homes since October 8, 2008, [and] current residents.” Dowell appeals.

DECISION

I. Standing

Dowell first argues that the district court erred by concluding that Steps has standing to seek an HRO on behalf of the residents of its foster home. We apply a *de novo* standard of review to Dowell’s standing argument. *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007).

“A standing analysis focuses on whether the plaintiff is the proper party to bring a particular lawsuit. To establish standing, a plaintiff must have a sufficient personal stake in a justiciable controversy.” *Id.* (citation omitted). Standing may be acquired in either of two ways: “either the plaintiff has suffered some ‘injury-in-fact’ or the plaintiff is the beneficiary of some legislative enactment granting standing.” *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996). Thus, to overcome Dowell’s argument that Steps did not have standing to obtain the HRO issued by the district court, Steps must show that it has sustained an injury or that a statute confers standing on it to seek and obtain the HRO that was issued by the district court. *See id.*

A. Standing Based on Statute

The statute authorizing a district court to issue an HRO identifies the types of persons who may petition for an HRO:

A person who is a victim of harassment may seek a restraining order from the district court in the manner provided in this section. The parent, guardian, or stepparent of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor.

Minn. Stat. § 609.748, subd. 2 (2008) (emphasis added).

The district court concluded that Steps was entitled to seek and obtain an HRO on behalf of its residents because Steps, a limited liability company, is a “person” for purposes of the statute. *See Dayton Hudson Corp. v. Johnson*, 528 N.W.2d 260, 262-63 (Minn. App. 1995) (holding that corporation had standing to petition for HRO). Dowell concedes that the statute conferred standing on Steps to seek and obtain an HRO on its

own behalf. But Dowell contends that the statute did not confer standing on Steps to seek and obtain an HRO on behalf of the residents of its foster home because Steps is not among the persons listed in subdivision 2 of section 609.748.

Dowell's argument is correct with respect to S.R. and other minor residents. The second sentence of subdivision 2 provides that, if the victim of harassment is a minor, a petition seeking an HRO to protect the victim may be filed by a "parent, guardian, or stepparent." Minn. Stat. § 609.748, subd. 2. We interpret that sentence to mean that only those three types of persons may file such a petition. *See Nelson v. Productive Alternatives, Inc.*, 715 N.W.2d 452, 457 (Minn. 2006) (discussing "canon of statutory construction 'expressio unius [est] exclusio alterius,' meaning the expression of one thing is the exclusion of another"). Thus, subdivision 2 of section 609.748 does not confer standing on Steps to seek and obtain an HRO on behalf of the minor residents of its residential facility.

Dowell's argument also is correct with respect to C.C., an adult. The first sentence of subdivision 2 governs Steps's standing with respect to C.C. That sentence does not authorize anyone other than a victim of harassment to file a petition for an HRO. We note that, in *State v. Nodes*, 538 N.W.2d 158 (Minn. App. 1995), *review granted* (Minn. Dec. 20, 1995) *and appeal dismissed* (Minn. Feb. 9, 1996), this court held that the legal guardian of an adult ward may petition the district court for an HRO on behalf of the ward, even though section 609.748 does not expressly provide for a harassment petition by a guardian on behalf of an adult ward. *Id.* at 161. We relied on statutory provisions in other chapters, which generally confer "broad duties and powers" on

guardians “to protect the interests of their wards.” *Id.* (citing Minn. Stat. § 525.56 (1994)). But the facts of this case are different from those of *Nodes*. There is no suggestion that either Steps or Jahn is C.C.’s guardian, and there is no suggestion that either Steps or Jahn otherwise has been granted equivalent powers.

Thus, subdivision 2 of section 609.748 does not confer standing on Steps to seek and obtain an HRO on behalf of either S.R. or C.C.

B. Standing Based on Injury

A person has standing to commence and maintain an action if there is an “injury or threat of injury to a legally recognized . . . interest” of the person. *Envall v. Independent Sch. Dist. No. 704*, 399 N.W.2d 593, 596 (Minn. App. 1987), *review denied* (Minn. Mar. 25, 1987). This court previously has held that a corporation may be a “person who is a victim of harassment” for purposes of section 609.748, subdivision 2. *Dayton Hudson Corp.*, 528 N.W.2d at 262-63. In that case, the offensive conduct victimized the corporation because it occurred on the corporation’s property, which was a retail store. *Id.* at 261. The harasser assaulted the corporation’s employees on 12 occasions. *Id.* We noted that a corporation “has a duty to its employees to provide a safe work environment.” *Id.* at 262 (citing *Dawley v. Thisius*, 304 Minn. 453, 456, 231 N.W.2d 555, 558 (1975)). Even though the harasser did not assault customers of the store, we noted that, “[a]s a shopkeeper, Dayton’s also owes its customers a duty to exercise reasonable care for their safety.” *Id.* (citing *Jepson v. Country Club Market, Inc.*, 279 Minn. 28, 29, 155 N.W.2d 279, 280 (1967)). We allowed the corporation to pursue an HRO as a “means of fulfilling these duties” toward its employees and customers. *Id.*

Steps has established an injury or threat of injury, but its standing must be limited to its own interests. Steps has a legally recognized interest in an HRO prohibiting Dowell from entering Steps property. *See id.* at 262-63. Steps also has a legally recognized interest in an HRO prohibiting Dowell from harassing Steps employees while those employees are carrying out their job responsibilities. In addition, Steps likely has a legally recognized interest in an HRO prohibiting Dowell from harassing Steps's residents while those residents are in its care or control, although its duty toward its residents is not as clearly defined as that of a shopkeeper toward its customers. *See id.* at 262. In these situations, an HRO might help Steps fulfill its duties toward its employees and its residents. *See id.* If, however, Dowell harasses Steps's residents without implicating Steps's duty toward the residents, only the residents or their legal guardians have standing to seek an HRO.

C. Ratification

In the district court, Steps argued, in the alternative, that it has standing to seek and obtain an HRO on behalf of C.C. because Jahn ratified the action on C.C.'s behalf. The rules of civil procedure allow for the ratification of an action by "the real party in interest." Minn. R. Civ. P. 17.01. But Jahn is not the real party in interest; she is merely the president of a company that operates the foster home where C.C. resides.

In the district court, Steps also appears to have argued that Jahn has authority to ratify the action on behalf of C.C. because C.C.'s social worker ratified it by giving written approval to Jahn. The district court record, however, contains limited information about C.C.'s social worker's authority to act on C.C.'s behalf. In a memorandum of law

filed in response to Dowell's motion *in limine*, Steps's attorney represented to the district court that C.C. is under the jurisdiction of Hennepin County Social Services until she turns 19 years old or is discharged, which likely will occur when she graduates from high school. The attorney stated that he was so informed in a conversation with C.C.'s social worker. No details were provided to support the attorney's conclusory statement. There is no testimony or documentary evidence in the district court record about the legal relationship between C.C. and her Hennepin County social worker or about the county's claim of jurisdiction over her. One of the witnesses at the hearing was the social worker for a different resident, I.T., a minor, but that social worker's testimony did not address C.C. or the general subject of a social worker's authority to act on behalf of adult residents of foster homes. We are not aware of any legal authority providing that an adult who is a resident of a state-licensed foster home until age 19 is lacking in capacity or competence to such an extent that another person may commence a legal action on her behalf. We note that Steps chose not to file an appellate brief and elected to rest on its district court submissions. In light of the procedural posture of this case and the arguments presented by the parties, we conclude that Steps has failed to demonstrate that C.C.'s social worker had authority to ratify the petition for an HRO on behalf of C.C.

As for ratification on behalf of S.R., Steps did not expressly make such an argument to the district court, but its memorandum responding to Dowell's motion *in limine* could be construed to have raised the issue. Again, we are not aware of any legal authority providing that a social worker is the legal guardian of a minor resident of a foster home or otherwise has authority to ratify a legal action on behalf of such a resident.

In light of the procedural posture of this case and the arguments presented by the parties, we conclude that Steps has failed to demonstrate that S.R.'s social worker had authority to ratify the petition for an HRO on behalf of S.R.

Thus, the district court erred by concluding that Steps had standing to petition for an HRO on behalf of C.C., S.R., and the other residents of Steps's facility. Steps may seek and obtain an HRO only to protect its own interests.

II. Evidence of Harassment

Dowell next argues that, in light of Steps's limited standing, the district court erred by granting an HRO because she did not engage in harassment of Steps. A district court may grant an HRO only if it finds "that there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2008).

"Harassment" is defined as either

a single incident of physical or sexual assault 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.

Minn. Stat. § 609.748, subd. 1(a)(1) (2008). We apply a *de novo* standard of review to questions of statutory interpretation and an abuse-of-discretion standard of review to a district court's ultimate decision to issue an HRO. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008); *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), review denied (Minn. Sept. 29, 2004); *Witchell v. Witchell*, 606 N.W.2d 730, 731-32 (Minn. App. 2000).

In this case, the district court's finding of harassment is based on the statutory provision concerning "repeated incidents of intrusive or unwanted acts, words, or gestures." Minn. Stat. § 609.748, subd. 1(a)(1). Steps presented evidence of only two incidents: Dowell's message to S.R. and her interactions with C.C. at Walmart. When the evidence is viewed through the frame of Steps's limited standing, the evidence of Dowell's contact with C.C. at Walmart becomes immaterial. The contact between Dowell and C.C. at Walmart cannot constitute harassment of Steps because C.C. was not at Steps's residential facility, had exited the Steps vehicle, and was not in Steps's care or control when Dowell and C.C. had contact with each other. Nothing prohibited C.C. from filing her own harassment petition against Dowell. But the petition in this case was filed by Steps, and the contact between Dowell and C.C. at Walmart cannot be the basis of a finding that Dowell engaged in harassment of Steps.

The only remaining evidence supporting Steps's petition is the evidence of Dowell's message to S.R. The question is whether Steps proved that Dowell engaged in "repeated incidents of intrusive or unwanted acts, words, or gestures" *against Steps*. Minn. Stat. § 609.748, subd. 1(a)(1). Assuming that Dowell's message to S.R. affects Steps's legally recognized interests, the message is insufficient to allow Steps to prove that Dowell harassed Steps because it is only a single incident. *See Peterson*, 755 N.W.2d at 766; *Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004); *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002). Thus, Steps did not present evidence sufficient to prove that Dowell engaged in harassment of Steps. In light of this conclusion, we need not consider other issues raised by Dowell's appeal, such as whether

her conduct was “intrusive or unwanted” or whether it had a “substantial adverse effect [on] the safety, security, or privacy of another.” *See Dunham v. Roer*, 708 N.W.2d 552, 566 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Before concluding, we note that Dowell makes one additional argument, that the district court erred by permitting a witness to give testimony via telephone. This issue is governed by rule 43.01 of the Minnesota Rules of Civil Procedure. This court previously has held that district courts erred by admitting telephonic testimony. *See In re Bieganowski*, 520 N.W.2d 525, 528 (Minn. App. 1994), *review denied* (Minn. Oct. 27, 1994); *In re Martin*, 458 N.W.2d 700, 703-04 (Minn. App. 1990). But we need not consider the issue in light of our resolution of Dowell’s first two arguments and our disposition of the appeal on those grounds.

In sum, the district court erred by finding that Dowell engaged in harassment and by issuing the HRO. As a consequence, the district court’s decision to issue the HRO is reversed, and the HRO must be, and hereby is, vacated.

Reversed.