**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-1544**

Paula Polinsky, petitioner,
Respondent,

vs.

Charles M. Bolton,
Appellant.

**Filed May 22, 2017**
**Affirmed**
**Jesson, Judge**

Hennepin County District Court
File No. 27-CV-15-15467

William R. Skolnick, Andrew H. Bardwell, Skolnick & Joyce, P.A., Minneapolis, Minnesota (for respondent)

Zorislav R. Leyderman, The Law Office of Zorislav R. Leyderman, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Smith, Tracy M., Judge.

**U N P U B L I S H E D  O P I N I O N**

**JESSON**, Judge

On appeal from the district court's grant of a harassment restraining order (HRO) in favor of respondent Paula Polinsky, appellant Charles Bolton argues that (1) the record is insufficient to support the grant of the HRO, (2) the HRO's prospective limits and

requirements for his online activity act as a prior restraint on his First Amendment freedom of speech, (3) the HRO is unconstitutionally vague and overbroad, and (4) the HRO is excessive in length. We affirm.

## FACTS

Polinsky and Bolton first met in 2006 and began a romantic relationship, which lasted until 2009. The parties had a volatile relationship, with each claiming verbal and physical abuse by the other party. Police reports were made in California and Minnesota, and both parties were prosecuted based on various incidents at different times.

Polinsky broke off the relationship in 2009, and Bolton became upset and angry, sending her profane emails after the breakup. She obtained a two-year HRO against him. Bolton was convicted of violating that order after a 2011 incident in which he approached Polinsky in his vehicle when she was exiting her workplace parking lot. On appeal, this court upheld that conviction. *See State v. Bolton*, No. A11-2262, 2012 WL 4052539 (Minn. App. Sept. 17, 2012), *review denied* (Minn. Nov. 27, 2012).

In 2012, after the 2009 HRO had expired, the district court granted a second HRO, which was based on Bolton's conviction for violating the first HRO. In its order on the second HRO, however, the district court concluded that Bolton's act of "following" Polinsky on Twitter did not amount to contact with her within the parameters of the previous HRO.

The second HRO expired in April 2014. In September 2015, Polinsky filed a petition for a third HRO against Bolton. At a district court hearing, Polinsky produced evidence that Bolton authored a blog website, which contained allegations of perjury

against her and misconduct by the prosecutor and the judge in the proceedings on the second HRO. The blog, which identified Polinsky by her former name, purported to describe her past in unflattering terms, called her a "law-breaking, vindictive ex-girlfriend," and contained a copy of her criminal record. It did not reference Bolton by name, instead referring to him as "our victim."

Polinsky also produced evidence that, using the blog's Twitter account, Bolton had sent her a Twitter "@mention" a total of eight times. An expert witness testified that the "@mentions" would result in notifications on her phone and that the primary purpose of sending an "@mention" on Twitter "is to get somebody's attention . . . to send them a notification and let them know about [a] tweet." At some point, Polinsky blocked Bolton from her Twitter account.

Bolton testified that he had tweeted about Polinsky to get public support for a lawsuit he had filed against the city attorney and the state seeking to vacate his conviction of violating the second HRO. He testified that, in tweeting links from his blog referring to Polinsky, he was relying on the district court's 2012 order, which determined that his act of "following" Polinsky on Twitter was not contact that formed the basis for the HRO.

When Polinsky and her fiancé were staying at a hotel for their destination wedding in 2015, a package was delivered to their hotel room. The package, which was delivered a few days before the wedding, contained photocopies of the blog and a copy of a 2008 police report referring to charges of fifth-degree domestic assault against Polinsky. The copy contained Polinsky's name, but had Bolton's name redacted. Polinsky became very upset when the package was received.

Bolton denied that he had sent the package. He noted that the address on the package misspelled the name of the hotel, consistent with Polinsky's previous misspelling of that name when he had been there previously with her. He testified that he initiated an inquiry with the post office to determine the origin of the package, which was not successful, and that he believed that Polinsky had sent the package to herself.

The district court issued an HRO for a period of 20 years, concluding that Polinsky had proved by a preponderance of the evidence that Bolton had engaged in acts of harassment within the meaning of Minnesota Statutes section 609.748 (2014).[1] The district court found that the contents of the blog, by itself, amounted to protected expression under the First Amendment, but that the contents of the blog also shed light on Bolton's other actions, some of which were acts of harassment. Specifically, the district court found that Bolton's "@mentions" of Polinsky on Twitter, as well as his sending the package to the hotel, constituted harassing acts. In so doing, the district court found that Bolton's denial that he had sent the package was not credible. Therefore, the district court found that Bolton had committed repeated acts of harassment, which had a distinct, adverse, and substantial effect on Polinsky's security and sense of privacy.

In its order, the district court also defined Bolton's prospective conduct that would be deemed a violation of the HRO. The district court stated:

> Writings or other communications by [Bolton] which are made available for public hearing or viewing and which contain addresses, telephone numbers, photographs or any other form

[1] The referee was the factfinder in this proceeding, and the district court affirmed the referee's findings of fact, making them the findings of the district court. *See* Minn. Stat. § 484.70 (2016).

> of information by which a reader may contact, identify or locate [Polinsky] are acts of harassment and are prohibited by this order. Any communications made by [Bolton] under an identity or auspices other than his true name and which refer to [Polinsky] are acts of harassment and are prohibited regardless of the truth or falsity of any statement made about [Polinsky].

On appeal, Bolton challenges the sufficiency of the evidence to support the HRO, as well as the district court's future prohibition on his communicating public information about Polinsky and mentioning her anonymously.

## D E C I S I O N

Bolton raises several challenges to the district court's HRO. First, he argues that the district court abused its discretion by issuing an HRO because his conduct did not meet the statutory definition of harassment. Second, he raises several challenges to the district court's imposition of the HRO going forward. He argues that the HRO as applied to his prospective blog postings or other communications amounts to a prior restraint on his First Amendment rights and is vague and overbroad. Finally, he argues that the district court abused its discretion by ordering a 20-year HRO. We consider these arguments in turn.

### I. *The HRO is supported by sufficient evidence.*

The district court may issue an HRO if it finds that there are reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3). Harassment is defined as either a single act 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." *Id.*, subd. 1(a)(1). In order to prove that harassment occurred, the statute

requires both (1) objectively unreasonable intent or conduct on the part of the harasser and (2) an objectively reasonable belief on the part of the person subject to harassment. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

This court reviews the district court's grant of an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). A district court abuses its discretion if it makes findings that are unsupported by the evidence or improperly applies the law. *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009). We review the district court's findings for clear error and defer to its findings regarding witness credibility, *Kush*, 683 N.W.2d at 843-44, but we review de novo its legal conclusion that the facts found satisfy the elements of harassment. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).[2]

The district court found that Bolton had committed repeated acts of harassment, based on his sending the package to Polinsky at the hotel and on his "@mentions" of her on Twitter. Bolton contends that the HRO is not supported by sufficient evidence because the district court's finding that he sent the package is clearly erroneous and because his

[2] Because the HRO statute does not include a standard of proof, the preponderance-of-the-evidence standard applies to the decision to grant an HRO. *See* Minn. Stat. § 609.748 (not identifying a standard of proof for HROs); *State by Humphrey v. Alpine Air Prods., Inc.*, 500 N.W.2d 788, 790 (Minn. 1993) (stating that statutory silence regarding a standard of proof "is regarded as a signal that the legislature intended the preponderance of the evidence standard" to apply). A preponderance of the evidence means a greater weight of the evidence, or that a claim is more likely true than not. *State v. Maley*, 714 N.W.2d 708, 712 (Minn. App. 2006).

"@mentions" on Twitter do not constitute contact for purposes of the harassment statute. We examine each argument in turn.

***Package***

Bolton first argues that Polinsky failed to establish by a preponderance of the evidence that he sent the package to the hotel. He argues that the mere fact that the materials in the package were printed from his public website and that the package was mailed from a post office that he had visited did not establish that he sent the package. He maintains that he introduced a substantial amount of evidence supporting his position, including that there was no evidence that he knew where the Polinskys were; that the address on the package contained misspellings previously used by Polinsky; and that he attempted to trace the package through the post office, suggesting that he was not the sender.

But the district court pointed to evidence in support of its finding that Bolton sent the package, including that he had the ability to locate the wedding site and date via the Internet; that he had previously used Polinsky's own website to access her photograph, which he had incorporated into his blog website; and that the contents of the package included a police report in which Bolton's name, but not Polinsky's, had been blacked out. And the fact that Bolton initiated an attempt to trace the package through the postal service is not determinative of whether he was the person who sent the package. The district court also found that when testifying, Bolton clearly showed continuing anger towards Polinsky, including references to sexual behaviors during their good years that bore little relationship to the matters at issue. "Credibility determinations are the province of the trier of fact."

*Peterson*, 755 N.W.2d at 763. The district court's finding that it was more credible that Bolton sent the package than that Polinsky or another person sent it is not clearly erroneous.

***Twitter "@mentions"***

Bolton argues that the district court's finding that his "@mentions" of Polinsky on Twitter constituted harassment are unsupported by the evidence. He argues that, in the 2012 restraining order, the district court had determined that his act of "following" Polinsky on Twitter was a notification sent by Twitter, not Bolton, and did not amount to harassment. He points out that he did not send Polinsky a direct message on Twitter, which is a more direct form of communication.

But the 2012 order related only to "following" a person on Twitter, not initiating an "@mention" of that person on Twitter. One commentator has indicated that the use of "@mentions" on Twitter, as well as "tagging" on Facebook, may constitute communication within the context of harassment. *See* Nancy Leong & Joanne Morando, *Communication in Cyberspace*, 94 N.C. L. Rev. 105, 120, 123-24 (2015). "[B]y tagging the target of a message, the speaker has taken affirmative steps to ensure that the target receives the message." *Id.* at 123-24. The district court found that the use of the "@mentions" was deliberate contact with Polinsky that was unwanted and had a substantial adverse effect on her security. We agree with this reasoning and conclude that Bolton's Twitter "@mentions" of Polinsky satisfy the statutory definition of harassment. *See* Minn. Stat. § 649.748, subd. 1(a)(1).

Bolton also argues that even if Twitter "@mentions" may generally constitute harassment, Polinsky only submitted evidence that she received one "@mention" before

she blocked Bolton from her Twitter account. Therefore, he argues, she failed to provide evidence of the "repeated incidents of intrusive or unwanted acts" required under the HRO statute. *See id*. But because we have concluded that the district court did not clearly err by finding that Bolton sent the package to the hotel, which qualifies as one incident of harassment, Bolton's single "@mention" of Polinsky on Twitter, which she received, combined with the package incident, means that he engaged in repeated incidents as required under the statute.[3] The evidence sufficiently supports the district court's issuance of an HRO.

## II. *The HRO applied prospectively does not operate as a prior restraint on Bolton's First Amendment rights.*

Bolton also challenges the scope of the prospective HRO ordered by the district court. He argues that the HRO operates as a prior restraint on his First Amendment right of free speech because it prohibits him from communicating public information about Polinsky and commenting about her anonymously.

The United States and Minnesota Constitutions guarantee the right to freedom of speech. U.S. Const. amend. I; Minn. Const. art. I, § 3. A primary purpose of the First Amendment is "to prevent previous restraints upon publication." *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 713, 51 S. Ct. 625, 630 (1931). Because prior restraints, including some judicial or administrative orders, forbid certain communications before they occur,

[3] We also note Bolton's argument that the district court erred by basing its determination of harassment on his act of communicating public information about Polinsky, such as her criminal record. But the district court noted in its order that while communicating a person's criminal record is not harassment, Bolton committed other acts that constituted harassing behavior.

they are generally viewed unfavorably under the First Amendment. *Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014).

When addressing Bolton's arguments, we are mindful that for purposes of First Amendment considerations, online speech stands on the same footing as any other form of speech. *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870, 117 S. Ct. 2329, 2344 (1997). But "the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S. Ct. 2559, 2564 (1981). For instance, we have held that an order for protection proscribing communication with a person is not a prior restraint because it does not prohibit a person from expressing ideas in general, but rather prohibits the expression of those ideas to the specific person protected by the order. *Rew*, 845 N.W.2d at 777. We may apply a similar interpretation to orders under the HRO statute. *See Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995) (stating that caselaw relating to the Minnesota Domestic Abuse Act may be recognized in interpreting the Minnesota HRO statute).

Bolton argues, however, that certain prohibitions in the HRO unduly burden his right to publish in his blog information about Polinsky that is already public. *See Okla. Publ'g Co. v. Dist. Court*, 430 U.S. 308, 310, 97 S. Ct. 1045, 1046 (1977) (holding that under the First and Fourteenth Amendments, a state court may not prohibit newspapers from publishing "widely disseminated" information obtained at public court proceedings). He points out that some of the information he has published, such as a police report noting

fifth-degree assault charges against Polinsky, is public data. *See* Minn. Stat. § 13.82, subd. 6 (2016) (noting that police response or incident data is public government data).

We agree with Bolton that speech that merely communicates readily available public information is protected under the First Amendment. *See Okla. Publ'g*, 430 U.S. at 310, 97 S. Ct. at 1046. And in its order, for instance, the district court expressly recognized that a person's prior criminal history is a matter of public record. But we do not interpret the scope of the district court's order to restrict Bolton's ability to post public records on his blog. Rather, the order more particularly labels as harassment any communication that "contain[s] addresses, telephone numbers, photographs or any other form of information by which a reader may contact, identify or locate [Polinsky]." This includes publishing Polinsky's Twitter handle, a method by which another person could contact her. Thus, the HRO refers to providing additional identifying information on Polinsky, which could accomplish indirectly what cannot be accomplished directly: enabling readers to contact her and invade her privacy. *See Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 233 (Minn. 2008) (interpreting statute to avoid allowing a party to accomplish indirectly what law prohibited from being accomplished directly). This concern is particularly relevant here, as Polinsky has now married, has a different last name from that previously published in the blog, and presumably also has a new address. Thus, the district court's order reflects the intent of the HRO to prevent certain conduct that is defined as harassing under the statute. *See* Minn. Stat. § 609.748, subd. 1(a)(1). This restriction is not a prior restraint.[4]

[4] We note that the district court's order does not require Bolton to delete information already posted on his blog. And under the terms of the HRO, he is free to duplicate and

Bolton also argues that the district court's order implicated his First Amendment right to speak anonymously. An author generally has the freedom to decide whether to disclose her or her true identity. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341, 115 S. Ct. 1511, 1516 (1985). But "[t]he right to speak, whether anonymously or otherwise, is not unlimited . . . and the degree of scrutiny varies depending on the circumstances and the type of speech at issue." *In re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011). The right to speak anonymously is most strongly implicated when a speaker engages in political speech. *Id.*; *see, e.g.*, *McIntyre*, 514 U.S. at 357, 115 S. Ct. at 1524 (holding that a state's statutory prohibition against anonymous campaign literature violated the First Amendment). In addition, the Supreme Court has articulated that in general, First Amendment protection is most vigorous for speech dealing with public issues, rather than speech relating to matters of private concern. *Snyder v. Phelps*, 562 U.S. 443, 452, 131 S. Ct. 1207, 1215-16 (2011).

Bolton argues that the speech on his blog relates to matters of public concern, such as his criticism of the court system. We recognize that Bolton has a First Amendment right to comment on matters that relate to public issues and that his blog may be an appropriate forum for exercising that right. But the HRO does not prohibit this discussion. Rather, it narrowly prohibits blog postings that identify Polinsky's current contact information,

---

post public records, which may identify Polinsky by her former name as reflected in those records. What he may not do, however, is provide additional identifying information on Polinsky, such as her updated name and address, phone number, or Twitter handle.

which does not implicate political speech or matters of public concern. *See id.*; *see also In re Anonymous Online Speakers*, 661 F.3d at 1173.

In addition, the district court carefully crafted its order, which was narrowly tailored to protect the state's interest in protecting Polinsky from additional harassment by Bolton, who had been previously convicted of violating another HRO with respect to her. *See Rew*, 845 N.W.2d at 781 (concluding that terms and conditions of extended OFP were no broader than necessary when record showed that actor had repeatedly violated OFPs and previous OFP established that actor had committed abuse against the victim). Thus, the order appropriately required, among other provisions, that Bolton use his real identity when posting about her. *See id*. Bolton's use of his real name in future blog postings will allow Polinsky to locate him and identify him as the potential source of any additional harassing conduct. Under these circumstances, the terms of the HRO did not unconstitutionally chill Bolton's First Amendment right to speak anonymously.[5]

## III. *The prospective HRO is not unconstitutionally vague or overbroad as applied to Bolton's speech.*

Bolton also argues that the district court's order is overbroad and vague as applied to him. A law "is unconstitutionally overbroad as applied if it prohibits constitutionally protected activity in the particular context of the facts and circumstances of the case." *State*

[5] Bolton further argues that the First Amendment also protects freedom of thought and that he has the right to express his beliefs anonymously. But in certain situations, the government has a compelling state interest in protecting potential victims, such as Polinsky, and it may regulate constitutionally protected speech if it chooses the least restrictive way to do so. *See Sable Commc'ns of Cal., Inc. v. FCC*, 492 U.S. 115, 126, 109 S. Ct. 2829, 2836 (1989).

*v. Hall*, 887 N.W.2d 847, 856 (Minn. App. 2016) (citing *Rew*, 845 N.W.2d at 780), *review denied* (Minn. Feb. 22, 2017). We have rejected the argument that the harassment statute is facially overbroad because it could encompass words or actions protected as free speech. *Dunham*, 708 N.W.2d at 564-67. In *Dunham*, we held that the HRO statute did not regulate the time and place of speech in a public place, but was instead "directed at repeated intrusive or unwanted conduct that potentially could occur at any time or place." *Id.* at 565.

Bolton argues, however, that the HRO is overbroad as applied to his blog postings because it limits his First Amendment rights to disseminate public information on Polinsky and to post about her anonymously. He maintains that he would be subject to violating the HRO if he posts readily available public information relating to Polinsky. But he is not precluded from posting public records, but only from posting information by which a person could contact Polinsky to further harass her. Thus, the order does not violate the First Amendment because it regulates only conduct that is a "substantial invasion of [Polinsky's] privacy." *Id.* (citing *Gormley v. Dir., Conn. State Dep't of Prob.*, 632 F.2d 938, 942 (2d Cir. 1980) (upholding a statute prohibiting telephone harassment as not unconstitutionally overbroad because harassment involves conduct and intrudes on the privacy of others). We also note that the restriction on Bolton's commenting on Polinsky without revealing his real name is narrowly tailored to serve the governmental interest of protecting her from additional harassment.

Bolton also argues that the district court's HRO is unconstitutionally vague as applied to his speech because it does not give sufficient information as to what is prohibited

under the order. An order is unconstitutionally vague if persons of "common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 (1926). Bolton maintains that a reasonable person would need to guess at whether the HRO restriction on publishing Polinsky's identifying information applies to information he might file in court proceedings or communicate to his attorney. And he contends that reasonable people would not know whether, if he casually mentioned Polinsky's name in conversation without identifying himself, he would have violated the HRO.

We reject this argument. In *Dunham*, we concluded that the harassment statute was not vague on its face because "[a] reasonable person would know, for example, that repeated confrontations and incessant, unwanted phone calls over the course of several months could constitute harassment within the meaning of the statute." *Dunham*, 708 N.W.2d at 568. Similarly, we conclude that in this case, the HRO is not vague as applied. A reasonable person reading the district court's order would know in what context it would be prohibited to publish Polinsky's identifying information. Information conveyed in the context of the attorney-client relationship is protected by a privilege, and information in court proceedings is likewise privileged. *See Matthis v. Kennedy*, 243 Minn. 219, 224, 67 N.W.2d 413, 417 (1954). A common-sense reading of the district court's HRO would inform a reasonable person of its prohibitions, which are narrowly described. The district court's order is not void as unconstitutionally vague.

## IV. *The district court did not abuse its discretion by issuing an HRO for 20 years.*

Bolton argues that the district court abused its discretion by issuing the HRO for a 20-year period. By statute, the district court may order the relief granted in the HRO "for a period of up to 50 years" on a finding that the petitioner has been granted two or more previous restraining orders against the same respondent. Minn. Stat. § 609.748, subd. 5(b)(3).

Bolton does not dispute that Polinsky had two previous HROs granted against him. But he argues that in the previous order determining that he had violated the 2012 HRO, the district court found that his conduct of "following" Polinsky on Twitter did not amount to a violation. He maintains the district court "essentially misled" him into thinking that his conduct on Twitter was lawful and, as a result, he should not have a 20-year HRO issued against him.

The district court here, however, did not base its HRO findings on Bolton's "following" Polinsky on Twitter, but rather on his conduct of making "@mentions" of her on Twitter, which directly contacted her on her phone. The district court found that Bolton's reference to the 2012 order was inapposite, because the "@mention" process was different, according to expert testimony. The district court also found that Bolton's conduct of sending the package to Polinsky was another act that supported issuance of the order. Under these circumstances, as permitted by statute after two previous HROs, the district court did not abuse its discretion by issuing the HRO to extend for a 20-year period.

**Affirmed.**