

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A16-2061

A16-2062

Tami Juberian obo Minor Children, petitioner,
Respondent (A16-2061),
Tami Juberian, petitioner,
Respondent (A16-2062),

vs.

Nancy Hail,
Appellant.

Filed September 5, 2017

Reversed

Florey, Judge

Rice County District Court
File No. 66-CV-16-2479

Tami Juberian, Faribault, Minnesota (pro se respondent)

Nancy Hail, Faribault, Minnesota (pro se appellant)

Considered and decided by Rodenberg, Presiding Judge; Kirk, Judge; and Florey,
Judge.

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

FLOREY, Judge

In these consolidated appeals, appellant challenges the district court's grant of harassment restraining orders (HROs) sought by respondent social worker on her own behalf and on behalf of children involved in a CHIPS proceeding, arguing that the district

court (1) failed to make findings necessary to support the grant of the HROs and (2) made findings that were unsupported by the record. We reverse.

FACTS

Respondent Tami Juberian is the Rice County Social Services social worker assigned to a children-in-need-of-protection-or-services (CHIPS) case involving appellant Nancy Hail's three grandchildren. Respondent applied for HROs on behalf of the minor children and on her own behalf following several incidents involving appellant.

After the children were placed in foster care, appellant was allowed supervised visitation with them, but visitation was cancelled after the first appointment reportedly because of appellant's behavior and because she had not complied with a request for a urinalysis. According to respondent, she told appellant that she was

not to come to certain public events that [respondent] or the children attend because . . . [appellant] received one supervised visit [that] was canceled because of her behavior and possibly [being] under the influence of drug[s] and alcohol. [Appellant] was asked not to go to [the oldest child's] recreational places and [appellant] continues to do so.

After respondent gave her these instructions, appellant appeared at the oldest child's karate class on August 3, 2016, and at her gymnastics class on September 27, 2016. Appellant also accosted the child's foster father and "would not leave him alone" on August 16, 2016. Appellant argued that she had permission from the foster parents to drop off gifts for the children, but respondent stated that appellant had not been given the foster parents' contact information. Appellant said that she had talked to the foster parents in court.

Appellant testified that she did not purposely pursue contact with the children but had run into them while attending other classes or events in the same building or area. Appellant believed that respondent was retaliating by asking for an HRO because appellant had called the police and asked them to do a welfare check on the children at the foster parents' home.

Respondent also testified that at a hearing on October 17, 2016, appellant had mouthed comments at her and made a threatening gesture of drawing her finger across her throat during respondent's testimony. Following issuance of the ex parte HRO, appellant called respondent and left a voicemail accusing her of "causing drama." Respondent's supervisor, Suzi Kleindl, confirmed that appellant had said something about drama on the voicemail and that appellant denied making a threatening gesture. The district court found that appellant drew her "finger across [her] throat and then pointed at [respondent]" and "attend[ed] children's events after being told not to attend," and issued two HROs. This appeal followed.

D E C I S I O N

We review the district court's grant of an HRO for an abuse of discretion and its findings of fact for clear error, deferring to the district court's assessment of witness credibility. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). The district court's order must be supported by sufficient evidence. *Id.* at 844.

If a district court finds that there are reasonable grounds to believe that a person has engaged in harassment, it may issue an HRO restraining that person from having contact

with the targeted individual. Minn. Stat. § 609.748, subd. 5 (2016). “Harassment” includes “repeated incidents of intrusive or unwanted acts, words, or gestures that 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) (2016). The district court must find both that there were repeated intrusive acts and that the person to be restrained engaged in “objectively unreasonable conduct” and the victim had an “objectively reasonable belief” that the behavior was harassing. *Dunham v. Roer*, 708 N.W.2d 552, 566-67 (Minn. App. 2006). In addition to the requirement of repeated incidents, the evidence must show that the contacts were “intrusive or unwanted” and had “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).

The record before us provides insufficient evidence to support the issuance of the HROs. Although the evidence shows repeated contacts, there is no indication that this created a “substantial adverse effect on the safety, security, or privacy of another” or that appellant engaged in “objectively unreasonable conduct.” Respondent did not testify that appellant violated a court order in the CHIPS proceeding, which could provide a different means of enforcement, such as a contempt order, and the record contains no details of egregious conduct. Appellant’s gesture of drawing her finger across her throat, standing alone, is not sufficient to have a substantial adverse effect on respondent Juberian’s individual safety. We therefore reverse the HROs. *See Kush*, 683 N.W.2d at 844 (“[T]his

court will reverse the issuance of a restraining order if it is not supported by sufficient evidence.”).

Reversed.