

*This opinion will be unpublished and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
A17-0793**

Florkime Sannie-joy Paye, petitioner,
Respondent,

vs.

Abdullah Kiatamba,
Appellant.

**Filed February 5, 2018
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-HR-CV-17-191

Eva C. Wood, Minneapolis, Minnesota (for respondent)

John Arechigo, Arechigo & Stokka, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and
Smith, Tracy M., Judge.

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

BJORKMAN, Judge

Appellant challenges a harassment restraining order (HRO) issued against him, contending that evidence he contacted respondent three times, in violation of an ex parte order for protection (OFP), was insufficient to support issuance of an HRO and that the district court's findings are inadequate. We affirm.

FACTS

On February 24, 2017, respondent Florkime Sannie-joy Paye petitioned for an OFP, alleging that she was sexually assaulted twice by appellant Abdullah Kiatamba during that month. Kiatamba and Paye had known each other for several years through the African Immigration Services (AIS), where he is the executive director and she was a volunteer. The district court issued an emergency ex parte OFP that prohibited Kiatamba from having contact with Paye, either directly or through third parties, and set the case for an evidentiary hearing.

At the evidentiary hearing, Paye's counsel initially verified that Paye sought an HRO in the event the district court denied the OFP petition. Paye then testified that she and Kiatamba had just begun a romantic relationship when Kiatamba forcibly raped her on two occasions and that, before the second assault, he ripped her phone out of her hands, yelled and swore at her, and ordered her to ask his permission before using her own phone. Following the second incident, Paye sought medical attention and contacted the police.

Paye further testified that Kiatamba attempted to contact her three times on March 4, after issuance of the ex parte OFP. First, Kiatamba sent a text message to Paye's mother that stated, "Tell your daughter to give us back the keys to our office." Second, Kiatamba contacted Paye's brother and asked him to "tell your sister to give us our office keys or mail it back to us." Third, Paye received a call from a board member of an organization of which Paye was also a board member. Kiatamba had told the board member about his relationship with Paye, Paye's allegations, and the missing keys. The board member informed Paye of that conversation, asking her if she "really [took] it that far." Paye also

received an individually addressed email from Kiatamba on March 10 that notified her of an event.

When asked what effect “all this” had on her day-to-day life, Paye testified that she was afraid, paranoid, anxious, sleepless, and traumatized. She described Kiatamba as vengeful and prone to assaultive behavior, and said she feared he would kill her during one of his rages. She also explained that she was afraid of future sexual violence by Kiatamba or physical violence by him or his friends, to punish her for seeking the OFP and reporting his assaults to police.

Kiatamba testified that his sexual encounters with Paye were consensual and that Paye had initiated their romantic relationship, including sexual contact. Kiatamba admitted to sending Paye’s mother and brother text messages in order to retrieve the office keys, and described the email that Paye had received as part of a mass mailing that was auto-generated. An AIS volunteer who was a confidant of both parties gave testimony supportive of Kiatamba, describing Paye as a jilted lover.

The district court concluded that Paye had failed to sustain her burden of proof for issuance of an OFP. But the district court issued an HRO, finding that “[t]he harassment has or is intended to have a substantial adverse effect on [Paye’s] safety, security, or privacy.” The district court made additional findings on the record, including that Kiatamba intentionally violated the ex parte OFP on “at least three occasions,” and that his actions “had a substantial adverse effect upon [Paye]” and were intended to do so. Kiatamba appeals.

DECISION

An appellate court reviews “the issuance of an HRO . . . for abuse of discretion.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). We will not disturb a district court’s findings of fact “unless [they are] clearly erroneous” and must defer to “the district court’s opportunity to judge the credibility of witnesses.” *Id.* (quotation omitted); see Minn. R. Civ. P. 52.01. But we “will reverse the issuance of a restraining order if it is not supported by sufficient evidence.” *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

A district court may issue an HRO if it finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2016). “Harassment” includes “[r]epeated 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) (2016). A party seeking an HRO must prove “objectively unreasonable conduct or intent on the part of the harasser,” and “an objectively reasonable belief on the part of the person subject to harassing conduct.” *Peterson*, 755 N.W.2d at 764 (quotations omitted).

Kiatamba argues that his conduct did not constitute harassment, that Paye “failed to articulate how the text messages and email had a substantial adverse effect on her safety, security or privacy,” and that the district court’s findings were inadequate to support an HRO. We disagree.

As to whether Kiatamba committed repeated intrusive or unwarranted acts, the district court found that after being ordered not to have any contact—direct or indirect—with Paye, Kiatamba indirectly contacted her “on at least three occasions.” Paye’s testimony supports this finding. And it is partially supported by Kiatamba’s admission that he contacted Paye’s mother and brother separately seeking return of Paye’s office keys. The three indirect contacts through Paye’s family and a community board member occurred on the same day, which made them more likely to intrude on Paye’s sense of privacy and security. This is particularly true in light of Kiatamba’s defiance of the order prohibiting any conduct. We are not persuaded by Kiatamba’s assertion that the innocuous substance of his indirect communications through Paye’s family members negates a finding of objectively unreasonable conduct or intent. *See, e.g., State v. Egge*, 611 N.W.2d 573, 574-75 (Minn. App. 2000) (upholding HRO violation occasioned by a third-party insurance agent contacting victim about a policy application at the defendant’s behest), *review denied* (Minn. Aug. 15, 2000). And Kiatamba’s assertion that the district court erred because the harassment statute “does not allow for automatic entry of a[n] HRO whenever there has been a violation of an [e]x [p]arte OFP” is unavailing. Kiatamba cites no caselaw supporting this proposition and we are aware of none. Even where, as here, an ex parte OFP is dismissed following an evidentiary hearing, prior violations are, by definition, unwanted. And, as noted above, the district court’s finding of harassment is grounded in more than a single violation of the OFP.

As to the impact of Kiatamba’s conduct, the district court found that it “has or is intended to have a substantial adverse effect on [Paye’s] safety, security, or privacy.” *See*

Minn. Stat. § 609.748, subd. 1(a)(1). When asked how she had been affected by the sexual assault and the harassing contacts, Paye testified that “all this” caused her to fear for her life and to become paranoid, anxious, sleepless, and traumatized. It is clear from the context of her testimony that Paye made these statements in reference to Kiatamba’s unwanted contacts after issuance of the ex parte OFP, as well as in reference to the sexual assaults. While the district court did not make specific findings on witness credibility, its assessment that Paye’s testimony was credible can be inferred from its other findings. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (on conflicting testimony, observing that the district court’s OFP findings “implicitly indicat[ed]” that it found certain evidence credible, and deferring to that credibility determination).

Finally, we are not persuaded by Kiatamba’s argument that the district court failed to make adequate findings. While the HRO itself contains only one finding concerning the impact Kiatamba’s conduct had on Paye, the district court made oral findings at the conclusion of the evidentiary hearing that meet all of the statutory requirements for an HRO. *See* Minn. R. Civ. P. 52.01 (stating that it is “sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence”). In sum, the evidence and the district court’s findings are sufficient to show that Kiatamba’s repeated unwanted and intrusive acts both had and were intended to have a substantial effect on Paye’s safety, privacy, or security. On this record, we discern no abuse of discretion by the district court in issuing the HRO.

Affirmed.