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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1238**

Ashley Rae Crapser, petitioner,
Respondent,

vs.

Drake Wayne Smith,
Appellant.

**Filed April 9, 2018
Affirmed
Larkin, Judge**

Wright County District Court
File No. 86-CV-17-3336

Ashley R. Crapser, St. Michael, Minnesota (pro se respondent)

Drake W. Smith, Sartell, Minnesota (pro se appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's issuance of a harassment restraining order (HRO) on behalf of respondent and denial of appellant's motion to vacate that HRO. We affirm.

FACTS

On July 7, 2017, respondent Ashley Rae Crapser petitioned for an HRO against appellant Drake Wayne Smith. The petition alleged that Smith had been Crapser's boyfriend more than eight years earlier and that Smith had recently "[p]ersonally dropped off letters at [her] home," "repeatedly texted [her] after being told to stop," and repeatedly contacted Crapser through "facebook messages and posted inappropriately about [her] on facebook." The petition further alleged that Crapser believed Smith would continue to harass her "because he has been told on many occasions to stop, he will write in the letters that he knows he isn't supposed to contact [her], but still does and because of information shared from his family about potential mental health [issues] that he refuses to get help for." The district court granted Crapser an ex parte HRO against Smith. Smith requested a hearing.

On July 21, 2017, the district court held a hearing on Crapser's HRO petition. During the hearing, the district court explained to Smith that he could have a contested hearing and that if he chose to do so, he and Crapser would have the "right to call witnesses," the "right to ask them questions," and the right to testify at the hearing. The district court also explained:

If you're here because you disagree with some of the allegations in the petition, but you don't care whether a harassment restraining order is issued against you, I can issue an order that indicates you deny the allegations but you have no objection to the issuance of the restraining order; and the Court doesn't make any findings of harassment.

The district court noted that if Smith agreed to an HRO, that HRO would “be enforced like any other harassment restraining order” and that if he “had contact with Ms. Crapser in any way, [he] could be charged with a misdemeanor.”

Smith denied Crapser’s harassment allegations and stated, “[I]f it makes her feel comfortable that for this to be implemented, that’s fine to me. I would at least request to keep this information confidential.” Smith inquired whether he could use family mediation to “get it dropped” or otherwise avoid the HRO being on his “record.” The district court explained that family mediation was not an option, that because this was not a criminal case, the HRO itself was not on his criminal record, and that the court file regarding Crapser’s HRO petition is a public record and the district court would need “a substantial reason” to seal it.

The district court asked Smith if he wanted “to agree to the issuance of an order with no findings of harassment with the conditions that [he] have no contact with [Crapser].” Smith again disputed an allegation in the HRO petition, and the district court asked him if he wanted to contest the allegations. Smith responded, “No. Keep it going.” Crapser interrupted and asked the district court if the HRO would be on Smith’s “record” if he did not have a contested hearing. The district court clarified that Smith would have to be convicted of violating the HRO for there to be anything on his criminal record regarding the HRO, but that the HRO filings were part of the court system’s records. Smith asked if it would be possible to seal the HRO filings and the district court responded that it did not “know that that’s possible” and that Smith “should assume that it would just be public information.” The district court again asked Smith if he wanted to have a contested hearing

or agree to the HRO without a finding of harassment. Smith responded, “Yeah, that’s fine, but I just wanted it to go down as I denied these allegations.” The district court confirmed, “The order will specifically say that you deny the allegations and the Court makes no finding of harassment.”

After the district court asked Smith whether he would have a legitimate reason to be within a mile of Crapser’s residence, Smith stated that he “type[d] up [his] own statement of a timeline and everything as well” and asked the district court whether he would be able to submit that document. The district court replied that if Smith wanted to have a contested hearing he would have “the right to testify and try to offer any evidence [he] want[ed].” The district court again asked Smith if he “want[ed] to have a contested hearing” or “want[ed] to agree to the issuance of the order that says [he] den[ies] the allegations in the petition.” Smith responded, “I want to do that, but I’ll agree for her” and “I’ll agree for her.” The district court explained the contents of the proposed HRO, including that Smith denied the allegations of Crapser’s petition, that Smith had no objection to the issuance of the HRO, and that the court would not make a finding of harassment. Smith and Crapser agreed that this was their understanding of the HRO.

The district court granted Crapser a two-year HRO against Smith, stating that “[Smith] denies the allegations of the Petition but has no objection to the issuance of a Restraining Order. The court makes no findings of harassment.” Three days later, Smith requested an “order for Dismissal” of the HRO, arguing that “there were no findings of harassment and [he] now object[ed] to the issuance of a restraining order on file/in effect without proper cause or reason for it to be implemented against him.” The district court

held a hearing and denied Smith’s motion, reasoning that because Smith had agreed to the HRO at the prior hearing, the district court did not make any factual findings of harassment and its order notes that Smith denied the allegations. The district court also emphasized that it had explained to Smith more than three times that he did not have to agree to the HRO and could have a contested hearing. Smith appeals.¹

D E C I S I O N

In his pro se brief, Smith appears to make the following three main arguments: (1) there was insufficient evidentiary support for the grant of an HRO, (2) his agreement to the HRO was not voluntary, and (3) Crapser’s HRO petition contains defamatory statements. Smith’s brief does not set forth clear legal argument or authority in support of his requests for appellate relief.

“Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). “An assignment of error based on mere assertion and not supported by any argument or authorities in [an] appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997) (quotation omitted). We have reviewed the record in

¹ Crapser did not file a brief, and this court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03 (providing that if a respondent fails to file a brief, the case shall be determined on the merits).

light of Smith's arguments and do not discern obvious prejudicial error. Nonetheless, we briefly address Smith's arguments.

Evidentiary Basis for HRO

Smith contends that the HRO is invalid because it is based only on his agreement to the issuance of the HRO, and not on "evidence of harassing and adverse effecting behaviors from [him]" towards Crapser. Smith denies the allegations of the HRO petition and argues that Crapser failed to provide any verification of the harassing behavior alleged in the petition.

Because Smith consented to the HRO, the district court made "no findings of harassment." As the district court noted, its order granting the HRO therefore did not represent the judgment of the court that the alleged harassment had occurred. It merely represented Smith's agreement that an HRO would issue.

When a judgment is based solely on the agreement and consent of the parties, the judgment is "not a judicial determination of the rights of the parties and does not purport to represent the judgment of the court, but merely records the pre-existing agreement of the parties." *Hentschel v. Smith*, 278 Minn. 86, 96, 153 N.W.2d 199, 206 (1967) (quotation omitted). Given Smith's agreement to the issuance of an HRO without any findings regarding the underlying harassment allegations, evidentiary support for the allegations was unnecessary, and insufficient evidentiary support is not a basis for this court to grant relief.

Involuntary Agreement

Smith argues that the HRO is invalid because he was “receiving pressure from [Crapser], her attending family . . . , the court system, [and the] adverse effects [Crapser] has on [him] while in person to put her best interests before his . . . own.” Smith contends that he moved to dismiss the HRO because he realized that his “personal record of the false defaming allegations of a mental illness, stalking, threatening behavior, phone calls, and uninvited visits, would only be removed from the record if the case was dismissed.”

The district court may set aside a judgment that is based solely on the agreement of the parties for “fraud, mistake, or the absence of real consent.” *Hollenkamp v. Peters*, 410 N.W.2d 427, 429 (Minn. App. 1987). Smith’s statements at the HRO hearing indicate that he agreed to the HRO because he believed Crapser wanted it. Smith stated that “if it makes [Crapser] feel comfortable . . . for [the HRO] to be implemented, that’s fine to me.” And when asked whether he “want[ed] to have a contested hearing” or “want[ed] to agree to the issuance of the order that says [he] den[ied] the allegations in the petition,” Smith responded “I want to do that, but I’ll agree for her” and “I’ll agree for her.”

Smith does not allege, and the record does not suggest, that Crapser, her family, or the district court coerced Smith into agreeing to the HRO. In fact, Smith does not point to any evidence in the record that Crapser even encouraged him to agree to the HRO. The fact that Smith’s agreement to the HRO was partly motivated by his belief that Crapser wanted an HRO does not render his agreement involuntary.

Moreover, the record of the HRO hearing indicates that Smith’s decision to agree to the HRO was informed. The district court extensively discussed Smith’s options with

him on the record, including the option of a contested hearing where each side would have the right to call witnesses, cross-examine witnesses, and testify. The district court explained that if he agreed to an HRO, the HRO would “be enforced like any other harassment restraining order” and that if he “had contact with Ms. Crapser in any way, [he] could be charged with a misdemeanor.” Smith replied that he understood. When Smith disputed specific allegations and asked that evidence be admitted into the record, the district court asked Smith if he would prefer to have a contested hearing. The district court continued to discuss the agreed-upon HRO only after confirming that Smith did not want to have a contested hearing.

Although Smith expressed some concerns about whether the HRO would be on his “record,” the district court clarified that it would not be part of his criminal record unless he violated it, that the court file regarding the HRO was a public record, and that it was unlikely that the district court would seal the HRO filings. And the district court fully explained the contents of the proposed HRO, including that it would state that Smith denied the allegations of Crapser’s petition, that Smith had no objection to the issuance of the HRO, and that the court would not make a finding of harassment. Smith stated that this was his understanding of the proposed HRO and that he agreed with it.

In sum, the record simply does not support Smith’s claim that his agreement to the HRO was involuntary. Smith’s allegation that he personally felt pressure from Crapser, her family, and the court system to agree to the HRO does not amount to the “absence of real consent” required to set aside the HRO. *See Hollenkamp*, 410 N.W.2d at 429.

Defamatory Statements

Smith contends that the allegation in Crapser's HRO petition that he will continue to harass her because he has a mental illness is a "defaming rumor" that has not been verified by a medical professional, and that because the HRO was granted, the allegation will "go on the court file on [his] background." However, the presence of that unverified allegation in Crapser's HRO petition does not invalidate the resulting HRO, which is the subject of this appeal. Once again, the district court's HRO was based on Smith's agreement, not on factual findings regarding the allegations in the HRO petition. The accuracy of any of those allegations is therefore irrelevant in this appeal.

To the extent that Smith suggests that he has a defamation claim based on the allegation, such a claim is outside the scope of our review of the district court's issuance of the HRO and denial of Smith's motion to dismiss the HRO. To the extent that Smith suggests this court should seal the record containing Crapser's HRO petition, this court is an error-correcting court and cannot consider such action for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) ("A reviewing court must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quotation omitted)).

In conclusion, Smith does not present a basis for this court to grant relief from the underlying HRO.

Affirmed.