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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2024**

Dean Murray, petitioner,
Respondent,

vs.

Casondra Schaffer, et al.,
Appellants.

**Filed June 11, 2018
Reversed
Rodenberg, Judge**

Goodhue County District Court
File No. 25-CV-17-2716

Dean Murray, Zumbrota, Minnesota (pro se respondent)

Eric J. Nelson, Andrew C. Wilson, Halberg Criminal Defense, Bloomington, Minnesota
(for appellants Casondra Schaffer and Joe Siebenaler)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Hooten,
Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellants Casondra Schaffer and Joe Siebenaler appeal from the district court's issuance of a harassment restraining order (HRO) against them, arguing that the record does not support the determination that they committed harassment. Appellants also challenge the district court's evidentiary ruling concerning an audio recording offered at

the hearing. Because the district court made findings regarding only a single incident of harassing conduct not involving assault, stalking, or impermissible dissemination of images to support its HRO, and because the record does not support an implicit finding that repeated instances of harassing conduct occurred, we reverse. We do not reach appellants' evidentiary argument.

FACTS

Respondent Dean Murray petitioned the district court for an HRO against appellants Casondra Schaffer and Joe Siebenaler. In his petition, respondent alleged that appellants had harassed him and his family. An attachment to respondent's petition describes a dispute between the parties about a shed, constructed by respondent, and located on Schaffer's father's property. Schaffer had power-of-attorney for her father during the period of time involved here. Respondent erected the shed near his home, but he mistakenly thought he was placing it on his own property.¹

Respondent claimed that appellants made threats against him in an effort to get him to move the shed. His petition alleged that appellants made "uninvited visits" to his residence and that appellants threatened to burn the shed. The petition alleged that respondent was afraid for his own safety and for the lives of his family and his livestock. In particular, appellant expressed concern that his family could be trapped in the event of a fire, because the area surrounding his property is wooded and emergency vehicles might not be able to access the property. The petition further alleged that appellants had twice

¹ Based on the transcripts of the HRO hearing, the parties appear to be involved in other pending litigation concerning the property dispute.

disregarded “no trespassing” signs on respondent’s property, and had threatened to return to the property again.

The district court granted respondent an initial ex parte HRO. The ex parte HRO prohibited appellants from direct or indirect contact with respondent, and prohibited appellants from being within 500 feet of respondent’s home. It also prohibited appellants from being near respondent’s job site, but without an explicit distance limitation.

Appellants requested a hearing after being served with the ex parte HRO. At the hearing, respondent testified that Schaffer ignored his “no trespassing” signs in a 2015 incident, came onto his property, and asked him to move the shed. Respondent testified about Schaffer coming onto his property a second time in April of 2016, during which she again asked him to move the shed in a “highly emotional rant.” Respondent further testified that he had contact with both appellants at a meeting of the local township board in April 2016, during which respondent requested a variance for a different building, located close to Schaffer’s father’s property line, but on his own property. Respondent testified that Schaffer attempted to “bully” the township board; he alleged no objectionable conduct by Siebenaler. Respondent also testified that he had contact with Schaffer during a Land Use Management Board meeting in May 2016, where Schaffer again opposed respondent’s variance request. Finally, respondent testified that appellants entered his property on October 22, 2017, ignoring his “no trespassing” signs. Respondent testified that appellants threatened to burn down the shed during this visit.

At the contested hearing, Schaffer sought to introduce a recording of her April 2016 conversation with respondent, but the district court declined to admit the recording into

evidence, reasoning that it was from a year and a half before the threats on which respondent based his request for a restraining order. Schaffer agreed during her testimony that she had entered respondent's property on the dates alleged. She denied threatening to burn down the shed. Siebenaler acknowledged that he entered respondent's property on October 22, but denied that he or Schafer had threatened respondent in any way. Siebenaler testified that he only entered respondent's property once.

Following the hearing, the district court found harassment to have been proved and issued a two-year HRO. The district court found that appellants made an uninvited visit to respondent's home when they entered respondent's property on October 22, despite a no-trespassing sign, and made threats to the petitioner concerning "burning down" the shed. It found that the harassment on October 22 had or was intended to have a substantial adverse effect on respondent. It found no other incident of harassment. The district court ordered appellants to remain at least 300 feet away from respondent's home and work and prohibited any direct or indirect contact with respondent.

This appeal followed.

D E C I S I O N

Appellants argue that the district court abused its discretion in granting respondent's HRO petition because the record fails to support a finding of repeated harassing conduct which is required to support a finding of harassment under Minn. Stat. § 609.748 (2016). Appellants argue that the district court found only one incident of harassing conduct, and that the record as a whole contains only one incident that qualifies as harassment under the

statute. Appellants also argue that the district court erred in excluding the audio recording Schaffer offered as evidence during the hearing.

“Ultimately, the issuance of an HRO is reviewed for abuse of discretion.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). An HRO that is not supported by sufficient evidence will be reversed. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004). Statutory interpretation is a question of law that we review de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). We review factual findings by the district court for clear error. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013).

A district court may grant an HRO if it finds there are “reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(3). The statute defines “harassment” as including:

[A] single incident of physical or sexual assault, a single incident of stalking . . . , a single incident of nonconsensual dissemination of private sexual images. . . , or repeated instances 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).

The HRO is a creature of statute and requires proof of harassment as statutorily defined. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 498-99 (Minn. 2018) (stating that order-for-protection relief under the Domestic Abuse Act may not be obtained unless a petitioner first meets the statutory requirements to show that domestic abuse has occurred);

Anderson v. Lake, 536 N.W.2d 909, 911 (Minn. App. 1995) (reasoning that the Domestic Abuse Act and the harassment statute are similar and “we may recognize caselaw construing the former as applicable to the latter”). Under the statute, a single incident of conduct may amount to harassment if it is an act of physical or sexual assault, stalking, or dissemination of private sexual images; other one-time actions are not harassment. See Minn. Stat. § 609.748, subd. 1(a); see also *Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004) (“Because the district court identified only one incident of harassment, the findings are insufficient to support the restraining order.”); *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002) (finding that a district court abused its discretion in granting an HRO “based on a single incident of words”). In the absence of one of the acts specifically identified as being alone sufficient to support an HRO, a district court must find “repeated instances” of harassing conduct before an HRO may properly issue. Minn. Stat. § 609.748, subd. 1(a). An incident under Minn. Stat. § 609.748, subd. 1(a)(1), which may be aggregated with other incidents to support a finding of harassment, must involve “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 (citations omitted). Objectively unreasonable conduct “goes beyond an acceptable expression of outrage and civilized conduct.” *Kush*, 683 N.W.2d at 846. “[I]nappropriate or argumentative statements alone cannot be considered harassment.” *Id.* at 844.

I. The district court did not make explicit findings regarding repeated instances of harassing conduct required by Minn. Stat. § 609.748, subd. 1(a).

We first consider whether the district court’s findings are sufficient to support the HRO. Respondent makes no claim that there was any incident of physical assault, sexual assault, stalking, or nonconsensual dissemination of sexual images. Accordingly, the HRO against appellants must be supported by repeated incidents of harassing conduct. Minn. Stat. § 609.748, subd. 1(a).

The district court found only one incident of harassing conduct by appellants: the October 22 incident, during which it found that appellants “ignored ‘no trespassing’ signs and entered [respondent’s] property.” Even if the October 22 incident involved objectively unreasonable conduct or intent on the part of appellants, which had or was intended to have a substantial adverse effect on respondent as required by Minn. Stat. § 609.748, subd. 1(a), it was not the sort of single incident that is sufficient to support an HRO. Therefore, the factual findings are insufficient to support a conclusion of statutory harassment upon which an HRO may properly issue. *See Roer*, 682 N.W.2d at 182 (reversing an HRO when the district court supported it with a finding of “only one incident of harassment” occurring on a single date).

II. The record evidence is insufficient to support an implicit finding by the district court that repeated instances of harassing conduct occurred.

Respondent concedes both that he did not allege an incident of physical or sexual assault, and that, absent an incident of physical or sexual assault, the grant of an HRO requires the district court to find “repeated” instances of other prohibited acts. Respondent asserts that the record contains evidence of repeated other acts amounting to harassment

that would support the district court's grant of the HRO. On appeal, appellate courts may consider a district court's implicit findings of fact. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). While respondent's argument is not phrased as one that the district court made implicit findings of repeated instances of prohibited acts, we read respondent's argument to be one that the grant of the HRO requires the inference that the district court did, in fact, implicitly make those findings, and that those findings are not clearly erroneous.

Because it is not for us to find facts on appeal, we consider the entire record to determine whether it is adequate to support an implicit finding of repeated instances of harassing conduct.

Respondent testified to a number of interactions with appellants. In order to determine whether the record is sufficient to support a finding of repeated incidents based on respondent's testimony, we must first consider whether any of the complained-of incidents qualify under Minn. Stat. § 609.748, subd. 1(a), as harassing conduct. As discussed, an incident under Minn. Stat. § 609.748, subd. 1(a)(1), (which may be aggregated with other incidents to constitute harassment) must involve "objectively unreasonable conduct or intent on the part of the harasser" and must involve "an objectively reasonable belief on the part of the person subject to harassing conduct." *Peterson*, 755 N.W.2d at 764 (citations omitted). Statements that are merely inappropriate or argumentative do not rise to the level of objectively unreasonable conduct. *Kush*, 683 N.W.2d at 846.

Respondent testified that offensive speech and conduct occurred on four occasions in addition to the October 22 incident. He testified that he encountered both appellants at a township meeting in April 2016. He testified that Schaffer entered his property during incidents in 2015 and 2016, and that he encountered Schaffer at a second public meeting in 2016. None of these incidents, even if proved, qualifies as harassing conduct under Minn. Stat. § 609.748, subd. 1(a).

Concerning the 2015 occasion wherein Schaffer entered respondent's property, respondent testified that appellant Schaeffer ignored a "no trespassing sign," "demanded" respondent move his shed and "threatened to sue" respondent if he did not move the shed. Respondent testified that he was "shocked and offended" by Schaffer's words and conduct on this occasion. Schaffer's action of entering her father's neighbor's yard to discuss a property-line issue with that neighbor is not objectively unreasonable conduct. True, respondent's property was posted to prohibit trespassing, but respondent's testimony does not suggest that Schaffer had an intent to harass respondent, and respondent's version of what motivated Schaffer in these interactions is that Schaffer has an obsessive concern for her father's property rights. We cannot discern from this record who is right about where the disputed shed is located relative to the property line, but the parties undeniably have a genuine legal dispute about that. Minn. Stat. § 609.605 (2014), the trespass statute, does not criminalize the entry upon "posted" property unless the property is a building, a cemetery, a construction site, a mining site, or agricultural property complying with particular posting requirements. None of those statutory circumstances exist here. More importantly, Schaffer's action in entering respondent's property to discuss a bona fide legal

dispute is not inherently unreasonable conduct. Although Schaffer threatened to sue respondent, “a person has a right to threaten to do that which [s]he has a right to do.” *Wise v. Midtown Motors*, 231 Minn. 46, 52, 42 N.W.2d 404, 407 (1950). Schaffer’s conduct during the 2015 visit does not qualify as an incident of harassing conduct under the statute.

The record also fails to support any implicit finding that Schaffer’s April 2016 visit to respondent’s property qualifies as an incident of harassment under Minn. Stat. § 609.748, subd. 1(a). Respondent testified that, shortly after a survey conducted of the Schaffer property (of which respondent was aware), appellant drove past his “no trespassing” sign, “launched into a highly emotional rant,” and told him that he would need to move the shed located on her father’s land or she would sue him. Schaffer also told him he would have to move his barn that was in violation of a local ordinance requiring that buildings be a certain distance away from a neighbor’s property line. Respondent testified that Schaffer “ridicule[d]” him and “insult[ed]” his intelligence. In response to this visit, respondent said that he placed a second “no trespassing” sign near his driveway.

The district court did not find that Schaffer’s conduct or intent during this interaction with respondent was objectively unreasonable. Schaffer has power-of-attorney for her father. A survey had indicated that one of respondent’s buildings was on her father’s property, and that another was impermissibly close to the property line. Threats to sue do not constitute harassing conduct. *See Wise*, 231 Minn. at 52, 42 N.W.2d at 407 (reasoning that a person has the right to threaten to take an action which she has a right to take). As her father’s attorney-in-fact under a power-of-attorney, Schaffer had the legal right to attempt to enforce the now-established-by-survey property lines. Schaffer’s conduct was

disturbing to respondent—the two of them were focused on the property-line dispute—but neither Schaffer’s conduct nor her intent in interacting with respondent was objectively unreasonable. The record might even support a finding that respondent was substantially adversely affected by the incident, as evidenced by his posting a new “no trespassing” sign. But, because Schaffer’s conduct and intent in seeking to enforce her father’s property rights were not objectively unreasonable, the record cannot support an implicit finding that the April 2016 incident qualifies as an incident of harassment under Minn. Stat. § 609.748, subd. 1(a).

Finally, the record does not support any implicit finding that appellants’ conduct at two local-government meetings in April 2016 qualify as incidents of harassment. Respondent testified that he encountered both appellants during a township board meeting, where he requested a variance because his barn was located 11 feet from Schaffer’s father’s property line, where the ordinary setback requirement is 30 feet. Schaffer raised concerns about the request and said that the board should consider that respondent’s small shed was on her father’s property. After the board approved the variance, respondent testified that Schaffer tried to “bully” the board. The record does not indicate that Siebenaler took any action at this meeting, despite being present. Next, respondent testified that he encountered Schaffer at a land-use board meeting, during which the variance for the barn was again discussed. Respondent testified that Schaffer, without Siebenaler present, brought to the attention of the land-use board the issue of respondent’s shed. Respondent did not testify concerning if and how appellants’ actions affected him on these two occasions.

Appellants' actions in attending and testifying at local-government meetings do not qualify as incidents of harassing conduct under Minn. Stat. § 609.748, subd. 1(a). The record contains no evidence indicating that respondent had an objectively reasonable belief that the appellants' conduct had a substantial adverse effect on his safety, security, or privacy. Further, opposing a variance request at a public meeting cannot be regarded as objectively unreasonable. The very purpose of such meetings is to afford a public forum in which citizens can be heard. An individual's participation at such meetings, discussing matters involving that individual's interest, is objectively reasonable. This is so even if the person is rude or inappropriate. *See Kush*, 683 N.W.2d at 846 (reasoning that "inappropriate or argumentative statements alone cannot be considered harassment"). Moreover, the record reveals no intent by appellants to do anything other than discuss their concerns about Schaffer's father's property line. While Schaffer's comments may have been inappropriate or marginally relevant to the dispute, they were not objectively unreasonable under the circumstances.

The district court expressly found a single incident of harassing conduct, but that incident was not of the sort allowed by statute to alone support an HRO. The other disturbing incidents which respondent identified as amounting to repeated incidents of harassing conduct were not found by the district court to have occurred; and even if the district court had accepted respondent's testimony concerning those other events, those other incidents, as a matter of law, do not qualify as harassing conduct under Minn. Stat. § 609.748.

The district court seems to have recognized that there is likely no good to come from further interactions between these parties. We agree. Nonetheless, because the district court's order relied on a single incident of harassing conduct, and because the record does not support an implicit finding of sufficiently severe repeated incidents, we reverse the HRO.

Because we reverse the district court's issuance of the HRO, we do not reach appellants' arguments regarding the district court's evidentiary ruling to exclude Schaffer's audio recording.

Reversed.