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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0309**

Tracy Leigh Thompson o/b/o D. X. T., petitioner,
Respondent,

vs.

David Winfred Thompson,
Appellant.

**Filed November 26, 2018
Affirmed
Bjorkman, Judge**

Anoka County District Court
File No. 02-CV-17-6254

Tracy Leigh Thompson, Elk River, Minnesota (pro se respondent)

David Thompson, Coon Rapids, Minnesota (pro se appellant)

Considered and decided by Worke, Presiding Judge; Bjorkman, Judge; and Randall,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges a harassment restraining order (HRO), arguing that (1) respondent-guardian lacked authority to seek an HRO on behalf of her ward and (2) the record does not support an HRO. We affirm.

FACTS

Appellant David Thompson married respondent Tracy Thompson in 2000, when her son, D.X.T., was six years old. Appellant acted as a father figure to D.X.T. but did not adopt him. The parties divorced in 2006 but had an ongoing relationship. Because D.X.T. has a “mild mental impairment” and other health issues, when he turned 18, appellant and respondent became his guardians. Over the years, the parties grew apart and experienced conflict. In July 2016, appellant was discharged as D.X.T.’s co-guardian and respondent became sole guardian.

In October 2017, respondent noticed that D.X.T. was “behaving differently” and learned that D.X.T. was in contact with appellant. Respondent petitioned for an HRO against respondent for D.X.T.’s benefit. At a hearing on the petition, respondent presented evidence that appellant was calling D.X.T. late at night, disrupting his sleep schedule and medication; contacting D.X.T. after work, contrary to her requests; and leaving D.X.T. in a state where he behaved disrespectfully toward her and his foster-home host father. She also testified that appellant and D.X.T.’s relationship “has been explosive, really gotten physical,” and she described a 2013 physical altercation during which appellant choked D.X.T.

The district court found that appellant harassed D.X.T. by (1) physically assaulting him in June 2013 and (2) repeatedly contacting D.X.T. in recent months contrary to respondent's directives, which has caused D.X.T. to "react[] negatively." The court granted a two-year HRO. David Thompson appeals.

D E C I S I O N

I. Respondent has standing to seek an HRO on behalf of D.X.T.

Appellant argues that respondent lacks authority to seek an HRO on D.X.T.'s behalf.¹ We have recognized that the issue of whether a guardian may obtain an HRO on behalf of her adult ward is a matter of standing. *State v. Nodes*, 538 N.W.2d 158 (Minn. App. 1995), *review granted* (Minn. Dec. 20, 1995) and *appeal dismissed* (Minn. Feb. 9, 1996). Whether a party has standing is a question of law, which we review de novo. *Dunham v. Roer*, 708 N.W.2d 552, 563 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). Guardians have "broad" powers under Minn. Stat. § 524.5-313(c) (2016) to protect the interests of their wards. *Nodes*, 538 N.W.2d at 161 (interpreting precursor to Minn. Stat. § 524.5-313). "The powers of the guardian of the person . . . of an adult ward would permit the guardian to seek [an HRO] on behalf of an adult ward." *Id.* Because respondent's appointment gave her all of the guardianship powers under Minn. Stat. § 524.5-313(c), we conclude she has standing to seek an HRO on behalf of D.X.T.

¹ Appellant fails to support his argument with explanation or legal authority. While such lapses may constitute waiver, *see State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997), we address the argument in the interests of justice.

II. The record supports the HRO.

We review the issuance of an HRO for an abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731-32 (Minn. App. 2000). We will not set aside a district court’s factual findings unless they are clearly erroneous, giving due regard to the district court’s opportunity to evaluate witness credibility. Minn. R. Civ. P. 52.01; *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (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 a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3) (2016). “Harassment” is defined as “a single incident of physical or sexual assault” or “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).

Appellant first argues that the record does not support the district court’s finding that he physically assaulted D.X.T. by choking him, “causing him to turn red and causing him to need medical attention.” To establish “harassment” by proof of a physical assault, “a petitioner must prove that the respondent intentionally inflicted or attempted to inflict bodily harm.” *Peterson v. Johnson*, 755 N.W.2d 758, 760 (Minn. App. 2008); *see* Minn. Stat. § 609.02, subd. 10 (2016) (defining assault). Bodily harm means physical pain or injury, illness, or any impairment of physical condition. Minn. Stat. § 609.02, subd. 7 (2016).

Respondent testified that appellant “attacked” D.X.T. because D.X.T. “marked [appellant’s] furniture with a scissors.” Appellant proceeded to choke D.X.T. until his face

turned red, stopping only when respondent intervened. Describing the situation as “explosive,” respondent took D.X.T. to the hospital. After checking D.X.T.’s status, hospital personnel had respondent and D.X.T. stay “for hours” until “the situation was calmed down.” Appellant cross-examined respondent about the altercation² but declined to testify. This record amply establishes that appellant intentionally caused D.X.T. physical pain and impaired his normal blood flow, which supports the district court’s assault finding.

Appellant next asserts that, even if the record supports the finding that he physically assaulted D.X.T., the record does not support an HRO because respondent did not prove an “imminent threat or intention to do present harm.” This argument is unavailing. The district court also found that appellant’s recent involvement in D.X.T.’s life is unwanted by his guardian and has negatively affected D.X.T. These unchallenged findings reflect present harassment under Minn. Stat. § 609.748, subd. 1(a)(1). Because the record demonstrates past and continuing harassment of D.X.T., we discern no abuse of discretion by the district court in issuing the two-year HRO.

Affirmed.

² Appellant contends the district court inappropriately interfered with his cross-examination about the nature of the choke hold he used. We disagree. The record reflects that the district court appropriately exercised its discretion to maintain decorum and focus the proceeding on the relevant issues. *See* Minn. R. Gen. Prac. 2.02(e) (stating that a judge is responsible for order and decorum in the court).