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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-0510**

Jacqueline Marie Thibodeaux, petitioner,  
Respondent,

vs.

Charles Matthew Waters,  
Appellant.

**Filed January 7, 2019  
Reversed  
Randall, Judge\***

Anoka County District Court  
File No. 02-CV-18-410

Jacqueline Marie Thibodeaux, Coon Rapids, Minnesota (pro se respondent)

Charles Matthew Waters, Coon Rapids, Minnesota (pro se appellant)

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

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

## UNPUBLISHED OPINION

**RANDALL**, Judge

Pro se appellant argues that the district court erred in granting respondent's request for a harassment restraining order (HRO). Appellant argues that his conduct did not meet the statutory definition of harassment, that his conduct was constitutionally protected, and that the district court was biased against him. Respondent did not file a brief on appeal. We reverse.

### FACTS

On January 13, 2018, appellant Charles Matthew Waters entered a liquor store shortly before closing time. Respondent Jacqueline Marie Thibodeaux, an employee of the store, greeted appellant by exclaiming that he had nine minutes left and pointing in his direction. Although this was respondent's normal practice near closing time, appellant, who suffers from post-traumatic stress disorder (PTSD), was taken aback. After some back and forth, respondent told the cashier not to sell to appellant and asked him to leave the store. At this point, appellant began to record their exchange on his cell phone. As appellant recorded respondent, she stated her name and encouraged anyone viewing the video to "follow [her]," apparently referring to social media.

Appellant later uploaded the video of their interaction to YouTube and tagged respondent's last name, "Thibodeaux."<sup>1</sup> The YouTube page allows comments, and one of

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<sup>1</sup> The district court viewed the YouTube video, but it was not submitted as an exhibit and is not part of the appellate record. See Minn. R. Civ. App. P. 110.01 ("The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases."). The district court indicated that the court of appeals

respondent's friends posted a comment criticizing appellant. Appellant and respondent's friend commented back and forth. In one of appellant's comments, he referenced a three-year old incident from respondent's Facebook page. Respondent then filed a petition for an HRO. Following a contested hearing, the district court found that appellant's actions constituted harassment and granted respondent's request for an HRO. This appeal follows.

## DECISION

A district court may grant an HRO if “the court finds . . . that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2018). Harassment includes “repeated 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.” Minn. Stat. § 609.748, subd. 1(a)(1) (2018). This court reviews a district court's grant of an HRO under an abuse-of-discretion standard. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). “A district court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses.” *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). “But this court will reverse the issuance of a restraining order if it is not supported by sufficient evidence.” *Id.* at 844.

Here, the district court stated on the record its findings that appellant posting the video to YouTube and engaging with respondent's friend on YouTube constituted

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could view the video on YouTube, but it is not possible to verify that the video currently posted on YouTube is identical to the video viewed by the district court.

“repeated contacts” “of unwanted, intrusive acts, words, or gestures.” Appellant argues that posting the video was not an intrusive or unwanted act. We agree.

As appellant filmed respondent, respondent stated her name and invited those viewing the video to “follow [her].” This clearly shows that appellant posting the video was not an intrusive or unwanted act. To the contrary, it shows that respondent wanted the video to be publicized and encouraged any accompanying notoriety. Apparently, respondent later had a change of heart. Respondent’s change of heart does not retroactively make posting the video an intrusive or unwanted act.

The district court found only one other intrusive or unwanted act, namely appellant’s online interaction with respondent’s friend. We note that Minn. Stat. § 609.748, subd. 1(a)(1) requires “repeated incidents of intrusive or unwanted acts.” The record does not contain evidence of “repeated incidents of intrusive or unwanted acts.” There is insufficient evidence to support the issuance of the HRO. Accordingly, we vacate the HRO.<sup>2</sup>

**Reversed.**

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<sup>2</sup> Because we reverse on the ground that there is insufficient evidence to support the issuance of an HRO, we do not reach appellant’s other arguments.