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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0699**

Rebecca Anderson, petitioner,
Respondent,

vs.

Benjamin Busse,
Appellant.

**Filed February 25, 2019
Affirmed
Bratvold, Judge**

Watonwan County District Court
File No. 83-CV-18-78

Zachary R. Strom, Sunde, Olson, Kircher & Zender, P.L.C., St. James, Minnesota (for respondent)

Michelle Olsen, Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Halbrooks, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges a harassment restraining order (HRO), arguing that the record evidence was not sufficient because his conduct was not “objectively unreasonable nor repeatedly intrusive,” he did not intend to harass respondent, and there was no evidence

that respondent was “substantially and adversely affected in her safety, security or privacy.” Because the district court’s HRO is supported by sufficient evidence, we conclude that the district court did not abuse its discretion in issuing the HRO and, therefore, affirm.

FACTS

Appellant Benjamin Busse lived across the road from respondent Rebecca Anderson, but had never met her or spoken to her. In August 2017, Busse posted two signs on Anderson’s property, where she lived with her parents. One sign said, “Pretty woman, the kind I’d like to meet,” and the other said, “Pretty woman walking down the street.” Anderson saw Busse’s signs while walking her dog near her home; she testified that the signs had scared her because she felt like someone was watching her. She removed the signs and showed them to her father. Anderson suspected “her neighbor with the last name of Busse” had posted the signs. After this incident, Anderson stopped her daily walks along the road for nearly six months.

On February 5, 2018, Anderson resumed her walks along the road near her home. The next day, Anderson received a bouquet of flowers and a card that stated, “If I were a cat, I’d want to spend all 9 lives with you. Happy Valentine’s Day.” The card was not signed with a name, and ended with several question marks. Anderson testified that when she received the flowers, she “was pretty freaked out that someone had even sent [her] flowers and were not really saying who they were.”

On February 8, Anderson’s father received a call from a second florist, stating that they had an order to deliver flowers and a card addressed to Anderson. The card stated,

“Roses are red, violets are blue, sometimes I’m right in front of you.” This card also was not signed. Anderson’s father refused the delivery. Anderson then contacted the Watonwan County Sheriff’s Office because she felt like someone was “stalking [her] or just watching [her] and [she was] just really scared.”

On February 10, a third florist called Anderson and told her that “they had flowers to deliver to her and they were from Benjamin Busse.” The card included with these flowers was also not signed and stated, “We’re close but have never formally met. I hope we will someday soon.” After she received the florist’s call about the third bouquet, Anderson testified that she felt afraid and intimidated. Anderson’s father testified that she was upset and he was concerned for his daughter’s safety.

A deputy spoke to Busse the same day that Anderson received the florist’s call about the third bouquet. Busse admitted posting the signs and sending the cards and flowers. Busse also said that he had not realized that his behavior was “weird” until he spoke to the deputy. And Busse agreed with the deputy that this was strange behavior and that he could “see why [Anderson] was getting a little freaked out.”

On February 12, 2018, Anderson filed an affidavit and petition for an HRO against Busse. In her affidavit, Anderson attested that Busse, a “neighbor who [she had] never met,” had posted “signs along the road” and “sent [her] flower bouquets multiple times.” Anderson also stated that Busse’s actions made her “afraid to be home alone” and that she was “unsure” if the harassment would continue. Anderson’s petition requested a two-year restraining order and asked that the district court prohibit Busse from harassing her or

contacting her and order Busse to stay away from her home. The district court issued an ex parte HRO and Busse requested a hearing.

On March 14, 2018, the district court conducted a hearing and received testimony from the deputy, Anderson, her father, and Busse. The deputy, Anderson, and her father testified to the facts described above. Busse testified that, although he had never met Anderson, he had a “romantic interest” in her and posted the signs to catch her attention. Busse also testified that after he put up the signs, he knew it was a “bad idea” and “not the right thing to do.” Busse stated that he thought about removing the signs, but that the signs were gone by the time he returned home from work. Busse testified that he sent the flowers as a “secret admirer,” and that he intended to send her three bouquets as “clues” and then reveal himself with the fourth bouquet. Busse testified that his intention was to “get to know” or “[d]ate” Anderson.

On March 23, 2018, the district court determined that there were “reasonable grounds to believe” that Busse harassed Anderson, and issued an HRO, which is valid through March 23, 2019. Busse appealed. Anderson did not file a brief and this court ordered the appeal to proceed under Minn. R. Civ. App. P. 142.03.

D E C I S I O N

“[T]he issuance of an HRO is reviewed for abuse of discretion.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). The 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). “[T]his court will reverse the issuance of a restraining order if it is not supported by sufficient evidence.” *Id.* at 844.

A district court may grant an HRO if it “finds at the hearing 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.” *Id.* at subd. 1(a)(1) (2018). In order to prove that harassment has occurred, Minnesota law requires both: (1) objectively unreasonable intent or conduct on the part of the harasser and (2) an objectively reasonable belief on the part of the person subject to harassment. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

The district court granted the HRO because it determined that Busse’s conduct—posting the signs and sending the cards and flowers—constituted repeated incidents of intrusive or unwanted acts. On appeal, Busse argues that (A) his conduct was not “objectively unreasonable nor repeatedly intrusive;” (B) he did not intend to harass Anderson; and (C) there was no evidence that Anderson was “substantially and adversely affected in her safety, security or privacy.” We address each argument in turn.

A. Objectively unreasonable and repeatedly intrusive conduct

For the purposes of an HRO, objectively unreasonable conduct is defined as conduct that “goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect on another’s safety, security or privacy.” *Kush*, 683

N.W.2d at 846. Statements that are merely argumentative or inappropriate do not rise to the level of harassment. *See Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000).

Busse argues that his conduct was civilized and not objectively unreasonable. He points out in his brief to this court that people “post signs for a variety of reasons,” including to support sports teams and political candidates, and to ask a date to prom. He notes that his signs had song lyrics. Busse also contends that “sending someone flowers is normal conduct used every Valentine’s Day, Mother’s Day, birthdays, and anniversaries every year.”

But just because these actions are normal in other circumstances does not mean that the district court erred in determining that Busse’s particular conduct toward Anderson was objectively unreasonable. It is significant that Anderson and Busse had never met. Also, Busse entered Anderson’s property, in rural Minnesota, to post signs near her home. Unlike the examples cited in Busse’s brief, Busse’s conduct was unwelcome by Anderson, who removed the signs and refused two flower deliveries.¹

At the hearing, Busse testified that after he posted the signs, he knew it was a “bad idea” and “not the right thing to do.” Busse admitted that he decided to remove the signs, but by the time he got there, the signs were gone. Additionally, Busse’s messages on the

¹ Busse testified that he did not know that the flowers had been refused until after he met with police. On appeal, Busse also argues he did not know his conduct was unwelcome. For the reasons discussed above, Busse had reason to know that his signs were unwelcome. But, more importantly, a district court may find objectively unreasonable conduct *either* because it is intrusive *or* because it is unwelcome. *See* Minn. Stat. § 609.748, subd. 1(a)(1) (defining harassment, in part, as “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”).

signs—“Pretty woman, the kind I’d like to meet” and “Pretty woman walking down the street”—imply that Busse was watching Anderson. Busse also sent Anderson cards and flowers three times without identifying himself, and used three different flower shops to do so. Accordingly, while Busse’s conduct might be “normal” in some other circumstances, his unwelcome conduct toward Anderson, a stranger, was objectively unreasonable. We conclude that the repeated nature of Busse’s anonymous contacts was intrusive and went “beyond . . . civilized conduct.” *Kush*, 683 N.W.2d at 846; *see also* Minn. Stat. § 609.748, subd. 1(a)(1).

Busse counters that the messages in the cards were “cheesy, innocuous, and perhaps humorous.” We do not agree, and note that Busse’s brief to this court never mentions that his second card stated, “Roses are red, violets are blue, sometimes I’m right in front of you.” This message implies that Busse was nearby and watching Anderson. This inference is bolstered by Busse’s timing; the day after Anderson resumed walking along the road, Busse sent her the first bouquet of flowers.

Busse’s communications were personalized: he sent flowers and cards to Anderson’s home and posted signs about her near her home. In *Welsh v. Johnson*, this court determined that personalized communications between an abortion protester and an abortion clinic director fit within the statutory definition of harassment. 508 N.W.2d 212, 216 (Minn. App. 1993). This court rejected the protester’s claims that his communications were “conciliatory” and “comfort[ing],” in part, because the communications were personalized. *Id.*

Busse also asserts that his conduct was not intrusive. Busse essentially argues that because he did not directly contact Anderson after he sent the flowers or posted the signs, and because Anderson’s father rejected two flower deliveries, his conduct was not intrusive. Busse does not offer any authority to support this assertion, and we reject it for the reasons already discussed.² We conclude that the district court did not abuse its discretion in determining that Busse’s conduct was objectively unreasonable.

B. Intent to harass

Busse testified that his conduct was intended to “catch [Anderson’s] attention,” to “get to know [Anderson],” and to “[d]ate” her. Based on his own testimony, Busse argues that he did not intend to *harass* Anderson, and therefore, the district court erred in finding intent. It is not necessary for us to decide this issue. An HRO must be supported by a finding of *either* objectively unreasonable conduct by the defendant *or* the defendant’s objectively unreasonable intent to harass. *Dunham*, 708 N.W.2d at 566-67 (providing that the HRO statute requires “objectively unreasonable intent *or* conduct on the part of the harasser”) (emphasis added). We have already determined that the record supports the district court’s finding that Busse’s conduct was objectively unreasonable.

² Busse does not clearly argue that the incidents proven were not “repeated,” as required by section 609.748, subdivision 1(a)(1). Busse notes that the sign posting was a single incident and argues the signs are insufficient evidence of harassment by intrusion without the subsequent conduct in February. He also implies that, because there was a “six-month gap” between the signs and the flowers, the incidents are not repeated. Busse cites no authority for this proposition and we reject his apparent claim that the incidents are too remote to be deemed repeated.

C. Substantial adverse effect on the safety, security, or privacy of another

Busse maintains that the evidence does not support the district court's determination that his conduct had "a substantial adverse effect on [Anderson's] safety, security, or privacy" or that Anderson had "an objectively reasonable belief" of such an effect. *See* Minn. Stat. § 609.748, subd. 1(a)(1); *Peterson*, 758 N.W.2d at 764 (quotation omitted). Busse argues Anderson's testimony that she was afraid is not reasonable for two reasons.

First, Busse argues that Anderson did not know who posted the signs or sent the flowers, and therefore, she did not have a "reasonable basis" to fear an "unknown person." Neither our caselaw nor the record support Busse's position. In *Welsh v. Johnson*, this court concluded that harassment by a "stranger," may constitute harassment that a reasonable person would understand to "adversely affect the safety, security, or privacy of another." 508 N.W.2d at 216. Additionally, while Anderson did not immediately know that Busse had posted the signs, she suspected "her neighbor with the last name of Busse" and "figure[d] it must have been the neighbor" in August 2017.

Second, Busse argues that Anderson's fear was based only on her "feelings" rather than any evidence of safety or security risks. But the district court relied on more than Anderson's testimony about her feelings. In fact, the record evidence established that Anderson took several safety precautions because of Busse's conduct: she stopped walking along the road for nearly six months; she contacted law enforcement when she was notified of the second bouquet; she sought an HRO after the third bouquet; and she felt uncomfortable being at home by herself. Beyond Anderson's testimony, the language in the cards from Busse and the repeated nature and timing of his contacts support the district

court's determination that Anderson's safety concerns were objectively reasonable. The deputy also testified that, based on his law enforcement experience, he believed that Anderson's fear was objectively reasonable given Busse's conduct. We conclude that the record amply supports the district court's determination that Anderson had an objectively reasonable belief of a substantial adverse effect on her safety, security, or privacy.

In sum, the district court found that there existed "reasonable grounds to believe that [Busse] has engaged in harassment" and therefore concluded that it should issue an HRO. While the district court could have gone into more detail in stating its findings, our review of the record leads us to conclude that the district court did not abuse its discretion in issuing the HRO.

Affirmed.