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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0810**

Carly Jaye Nelson, petitioner,
Respondent,

vs.

Oscar Ivan Garcia Medina,
Appellant.

**Filed February 4, 2019
Affirmed
Smith, Tracy M., Judge**

Scott County District Court
File No. 70-CV-18-2590

Carly Jaye Nelson, Prior Lake, Minnesota (pro se respondent)

Bruce M. Rivers, Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Oscar Ivan Garcia Medina challenges the grant of a harassment restraining order (HRO) against him, arguing (1) that his actions did not have and were not intended to have a substantial adverse effect on the safety, security, or privacy of another, and (2) that the geographic restriction prohibiting his presence in an area should not have

been imposed. Because he fails to show that the district court abused its discretion, we affirm.

FACTS

Garcia Medina and respondent Carly Nelson were in a romantic relationship from September 2016 until January 2017. Before and during their relationship, the parties were both working at the University of Minnesota Hospital—Nelson as a nurse and Garcia Medina as a medical resident.

For about a year after they broke up, Garcia Medina harassed Nelson on a number of occasions, which led to the grant of an HRO on January 31, 2018 (the first HRO). Garcia Medina harassed Nelson by continually trying to rekindle their relationship, despite Nelson's stated disinterest; appearing at Nelson's home late at night and calling, texting, and ringing her buzzer repeatedly when Nelson did not answer; sending Nelson a message saying, "Imagine all of the possible ways that I could retaliate against you"; accessing Nelson's private medical records, using his employment credentials, and gaining confidential information about Nelson, including her change of address; creating a fake social media profile of Nelson; and sending messages to her father and three of Nelson's supervisors from work, stating, in part, that Nelson was "getting drunk/high/laid" and that she was "offering [her] body to rich old men in exchange for money."

On the day following the issuance of the first HRO, Garcia Medina's new girlfriend, A.D., contacted Nelson and asked if Nelson would be willing to dismiss the first HRO in return for an apology and monetary compensation from Garcia Medina. A.D. claimed to be reaching out without Garcia Medina's knowledge. Nelson was reluctant to negotiate,

but, after a lengthy exchange of text messages, Nelson eventually met A.D. at a coffee shop. At the meeting, Nelson and A.D. signed a written agreement under which Nelson was promised \$20,000 for her dismissing the first HRO. Although Garcia Medina was not present at the meeting, the agreement identified him as a contracting party. Also, when Nelson was meeting with A.D., Garcia Medina contacted Nelson via A.D.'s cell phone, spoke to Nelson about the agreement, and apologized for his actions.

In accordance with the agreement, on February 5, 2018, Nelson asked the district court to dismiss the first HRO, which it did. Later that day, Garcia Medina sent Nelson a text message acknowledging that the first HRO had been dismissed and offering to meet her the following day for the payment. The next morning, Garcia Medina texted Nelson a picture of a check made out to her, along with a message saying, "Just got your check at the bank." He then sent her a screenshot of their text conversation, purportedly to make sure she was receiving all of his messages. This screenshot showed that Garcia Medina had labeled Nelson as "C-nt" in his cellphone contacts. Nelson asked why he sent the screenshot, and Garcia Medina apologized.

Nelson and Garcia Medina exchanged several more messages throughout the day to set up a meeting. Nelson told Garcia Medina that she would have her sleeping toddler daughter with her. Garcia Medina said he would bring a copy of the agreement, which he had signed and notarized, and he asked that they meet somewhere where they could "talk for a couple minutes to make sure the agreement [was] clear." The parties ultimately agreed to meet at a tea shop in St. Paul. Garcia Medina arrived after Nelson. He came to the table where Nelson and her daughter were sitting and thrust before her a copy of a magazine,

featuring on its cover the attorney representing him in this case. He also placed the attorney's business card on the table and told Nelson, "[My attorney] has your money; deal's off." Garcia Medina left the shop and drove away.

Later that afternoon, Nelson texted Garcia Medina and A.D., informing them that she would petition for another HRO if the agreement was not honored. Garcia Medina replied, "A case of extortion has been started against you. [My attorney] is waiting for my call to move on and press charges against you. You won't be able to leave the country or take that flight tomorrow."¹ He also told Nelson, "[My attorney] has your 20k for legal expenses."

Shortly thereafter, Nelson moved for an ex-parte HRO, which the district court granted. Following an evidentiary hearing, the district court granted Nelson's petition for a second HRO against Garcia Medina. Among the prohibitions, the district court prohibited Garcia Medina from "being within two blocks of [Nelson's] current job site" at the University of Minnesota Hospital.

Garcia Medina appeals.

DECISION

"An appellate court reviews a district court's grant of a[n] [HRO] under an abuse-of-discretion standard." *Kush v. Mathison*, 683 N.W.2d 841, 843 (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," but "[a] district court's

¹ Nelson had plans to fly out of the country the next day for an extended trip.

findings of fact will not be set aside unless clearly erroneous.” *Id.* at 843-44. A question of law is reviewed de novo. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

I. The district court did not abuse its discretion in granting the HRO.

To grant an HRO, the district court has to find “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 is statutorily defined, in pertinent 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.” *Id.*, subd. 1(a)(1) (2018). We have held that the HRO statute “requires proof of, first, objectively unreasonable conduct or intent on the part of the harasser, and, second, an objectively reasonable belief on the part of the person subject to harassing conduct.” *Peterson*, 755 N.W.2d at 764 (quotations and citation omitted).

The district court identified three incidents of harassment by Garcia Medina since the issuance of the first HRO: “calling [Nelson] a ‘C-nt,’ threatening her with extortion charges, and telling her that he’d given ‘her money’ to his new attorney.” It is not in dispute that the three incidents constituted “intrusive or unwanted acts, words, or gestures.” Minn. Stat. § 609.748, subd. 1(a)(1). Garcia Medina argues, however, that his conduct did not “have a substantial adverse effect . . . on the safety, security, or privacy of” Nelson. *Id.* According to him, his treatment of Nelson was “merely inappropriate and argumentative” and thus “insufficient to rise to the level of harassment.” *See Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002) (citing *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000)) (dicta). He tries to support this general contention in two ways.

First, Garcia Medina argues that Nelson’s “safety was never in question,” because “her sleeping daughter was present” when she met him to “complete the payment for dismissing” the first HRO. This argument is unpersuasive. As the district court noted, Nelson’s decision to bring her child to the meeting was “predicated on the illusory promise that the parties had resolved their issues and would be moving forward in mutual respect.” And the harassing nature of Garcia Medina’s conduct at the meeting was precisely that he shattered such illusion of respect in, as the district court found, a “dramatic” and “calculated” way.

Moreover, “[a] district court may still make a finding of harassment if such conduct has, or is intended to have, a substantial adverse effect on the safety, security or privacy of the average, reasonable individual, even if the intended victim shows resilience to the harasser’s ongoing conduct.” *Kush*, 683 N.W.2d at 842 (syllabus). Assuming for purposes of argument that Nelson was not fearful of or intimidated by Garcia Medina’s conduct at the meeting, he fails to show why the district court could not, based on the evidence, find his conduct objectively harassing.

Second, Garcia Medina explains that his comments merely “express[ed] a feeling of being oppressed because [Nelson] was holding the restraining order over [his] head in an effort to extort \$20,000.00 from him.” This explanation did not convince the district court. It is undisputed that the first HRO was rightfully granted, and it was A.D. who pleaded with Nelson to dismiss the order in return for monetary compensation. Initially, Nelson was extremely reluctant. The district court did not clearly err by finding that Garcia Medina was manipulating Nelson.

Furthermore, Garcia Medina's feelings, even if they were reasonable, do not justify his expressing his anger toward Nelson in a harassing manner. Affirming an HRO imposed on a person who unreasonably expressed outrage against his neighbor over damage to his property, we held that "there are limits to such expressions in order to keep peace in the community." *Id.* at 846. Garcia Medina has not shown why the district court erred by not finding that his conduct was "an acceptable expression of outrage and civilized conduct." *Id.*

We finally observe that Garcia Medina's prior harassment, which resulted in the first HRO and which the district court recognized in the HRO under review, gives context to the current situation. Given the history of Garcia Medina's prior conduct toward Nelson, there were objectively reasonable grounds to determine that Garcia Medina's actions after the grant of the first HRO had "a substantial adverse effect or [were] intended to have a substantial adverse effect on the safety, security, or privacy" of Nelson. Minn. Stat. § 609.748, subd. 1(a)(1).

On appeal, the party asserting error bears the burden to make the alleged error "appear affirmatively before there can be reversal." *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (quotation omitted); *see also Horodenski v. Lyndale Green Townhome Ass'n*, 804 N.W.2d 366, 372 (Minn. App. 2011) ("[T]he burden of showing error rests on the party asserting it."). Because Garcia Medina has failed to meet his burden, we affirm the district court's grant of the HRO.

II. The geographic restriction was not an abuse of discretion.

Garcia Medina raises two challenges to the geographic restriction prohibiting him from being within two blocks of Nelson’s workplace at the University of Minnesota Hospital. First, he argues that, under the HRO statute, the district court was not authorized to designate a geographic location where he could not be. It is true that the HRO statute does not explicitly provide for exclusion of the harasser from a specific location. Section 609.748, subdivision 5(a), simply states that an HRO may “order[] the respondent to cease or avoid the harassment of another person; or . . . order[] the respondent to have no contact with another person.” Minn. Stat. § 609.748, subd. 5(a) (2018).

However, it is also true that the HRO statute does not explicitly bar the granting of an exclusion radius as relief. In fact, subdivision 8(a) requires an HRO to set a clear boundary of proscribed conduct. See Minn. Stat. § 609.748, subd. 8(a) (2018) (“An order granted under this section must contain a conspicuous notice to the respondent . . . of the specific conduct that will constitute a violation of the order.”). Also, although caselaw does not seem to have conclusively answered the question whether district courts are statutorily authorized to grant HROs with geographic restrictions, this court did not take issue with such form of relief in *Welsh v. Johnson*, in which we held that a two-block restriction was permissible. 508 N.W.2d 212, 216 (Minn. App. 1993). Garcia Medina fails to convincingly show that the district court erred by prohibiting him from being near Nelson’s workplace.

Second, Garcia Medina argues that the two-block restriction was excessive. In support, he cites an unpublished opinion of this court, *Courtney v. McReynolds*, which interpreted the Domestic Abuse No Contact Order (DANCO) statute. A17-0759, 2018 WL

1043295 (Minn. App. Feb. 26, 2018). The DANCO statute provides that “the abusing party [may be excluded] from a *reasonable* area surrounding the dwelling or residence” of the abused party. Minn. Stat. § 518B.01, subd. 6(a)(3) (2018) (emphasis added). In *Courtney*, a one-mile geographic restriction was determined to be unreasonable, and Garcia Medina argues that the two-block restriction here was likewise unreasonable.

Garcia Medina fails to show why the two-block restriction was in fact unreasonable. The only basis for his claim of “unreasonable hardship” is that the restriction “terminat[es] any activity a doctor could have at the hospital.” However, nothing in the record indicates that Garcia Medina needs to carry out any activity as a doctor at the University of Minnesota Hospital. On February 2, 2018, A.D. sent the following text message to Nelson: “[Garcia Medina] was done at the U prior to any of this. I can tell you with 100% certainty, this is not the reason for his leaving. He was signing out of all of his cases in November.” Also, the written agreement among the parties stated, “[Garcia Medina] will not accept employment at the University of MN. His presence on the campus will be only to complete previous commitments.” Garcia Medina never explained what the “previous commitments” are. His assertion that he suffers “unreasonable hardship” due to the two-block restriction is not supported by the record. He has failed to show that the district court abused its discretion by imposing the geographic restriction. We, therefore, also affirm the district court’s decision in this regard.

Affirmed.