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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1008**

Tara Ann Nesmoe-Thompson, petitioner,  
Respondent,

vs.

Neil V. Lindemann, et al.,  
Appellants.

**Filed January 22, 2019  
Reversed  
Smith, Tracy M., Judge**

LeSueur County District Court  
File No. 40-CV-18-99

Michael P. Herrmann, Christopher E. Morris, Wornson, Goggins, PC, New Prague,  
Minnesota (for respondent)

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Lindemann and Margie L. Lindemann)

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

**UNPUBLISHED OPINION**

**SMITH, TRACY M., Judge**

Respondent Tara Ann Nesmoe-Thompson sought a harassment restraining order  
(HRO) on behalf of herself and her minor sons against appellants Neil and Margie  
Lindemann. The district court granted an HRO only with respect to Nesmoe-Thompson,

concluding that the Lindemanns had engaged in multiple incidents of conduct having a substantial adverse effect on her safety, security, or privacy. We reverse.<sup>1</sup>

## FACTS

Nesmoe-Thompson is the Lindemanns' daughter. The parties are estranged from each other. The fracture of their relationship appears to have originated with the Lindemanns' interference with the parent-child relationship between Nesmoe-Thompson and one of her sons, J.W.N. In 2015, Nesmoe-Thompson was granted an HRO against the Lindemanns, forbidding harassment of both Nesmoe-Thompson and J.W.N. That order was modified several times, once to permit the Lindemanns to attend J.W.N.'s sporting events, and again to require that the parties not sit near each other at sporting events.

In the spring of 2017, while the HRO was in effect and after it had been modified to permit the Lindemanns' attendance at J.W.N.'s sporting events, Margie Lindemann and Nesmoe-Thompson ran into each other—literally—at one of J.W.N.'s track meets. The parties dispute the nature of the contact: Lindemann says that Nesmoe-Thompson walked into her while not paying attention; Nesmoe-Thompson maintains that Lindemann stepped in front of her, elbowed her on purpose, and told her to “watch herself.” Nesmoe-Thompson then moved the district court for a new restraining order based on allegations regarding that event. The district court denied the motion, finding that “the allegations [were] not proven.”

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<sup>1</sup> The Lindemanns challenge not only the grant of the HRO but also its scope—its duration of 20 years and its prohibition on the Lindemanns' being within five miles of Nesmoe-Thompson's person or home. Because we reverse the HRO based on error in determining that harassment occurred, we do not reach the issues regarding its scope.

In late 2017, the then-existing HRO expired. On the day of its expiration, Nesmoe-Thompson emailed and sent a letter to the Lindemanns, informing them that she was “requiring that [they] are to have absolutely no unsupervised contact with” her children. The Lindemanns continued attending J.W.N.’s sporting events but did not have contact with Nesmoe-Thompson’s children until January 2018.

In January 2018, Nesmoe-Thompson was attending a hockey game in which J.W.N. was playing. Another of her sons, J.M.N., was also in attendance. After the game, Nesmoe-Thompson went down onto the ice for a “parents’ night” event. While Nesmoe-Thompson was on the ice, the Lindemanns left their seats—whether the timing was coincidental is disputed by the parties—then saw and spoke with J.M.N. Nesmoe-Thompson got off the ice, took J.M.N. out of the arena, and then returned to the arena. The parties argued. The Lindemanns claim that Nesmoe-Thompson was vulgar and unreasonable; Nesmoe-Thompson claims that Neil Lindemann shouted “hasta la vista Tara” several times, waved his hands in her face, and followed her, shouting her name, until she left the arena.

A few days later, Nesmoe-Thompson petitioned the court for a new HRO. She made allegations specifically related to the January incident at the hockey game and the incident at the track meet some eight months earlier. She alleged that the Lindemanns “continually show up” at her children’s events without invitation or permission, that they send emails and text messages from “unknown/fake email accounts” and “SMS codes that are untraceable,” and that they generally cause anxiety and threaten family stability by their mere presence. She requested that the HRO cover J.W.N., J.M.N., and herself. The court

dismissed J.W.N., who had recently turned 17, from the petition based on his own request and with the consent of the parties.

In April 2018, the district court granted the restraining order as to Nesmoe-Thompson but not as to J.M.N. The district court found that Neil Lindemann followed, threatened, and frightened Nesmoe-Thompson by yelling “hasta la vista Tara” and following her. Relying on those findings, it concluded that the incident at the hockey game was an incident of intrusive or unwanted conduct. *See* Minn. Stat. § 609.748, subd. 1(a)(1) (2018). It concluded that the incident at the track meet was also an incident of threatening and frightening behavior based on its finding that Nesmoe-Thompson was “shoved” and told to “watch herself.” The district court found that the Lindemanns had been notified “that their presence at [Nesmoe-Thompson’s] children’s sporting events was not welcome and would be considered harassment” but that they attended the events anyway. Finally, the district court found that, despite Nesmoe-Thompson’s efforts to prevent the Lindemanns from “having any contact with her children,” they “continued to show up at sporting events” and concluded that their attendance at those events “has a substantial adverse effect on [Nesmoe-Thompson’s] safety, security and privacy.”

The Lindemanns appeal.

## **D E C I S I O N**

A person may seek an HRO if that person is a victim of harassment. Minn. Stat. § 609.748, subd. 2 (2018). “Harassment,” as relevant here, 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), as well as “a pattern of attending public events after being notified that the actor’s presence at the event is harassing to another,” *id.*, subd. 1(a)(3) (2018). Caselaw has clarified that, to constitute harassment, the respondent’s conduct or intent must be “objectively unreasonable” and the petitioner’s belief that the conduct was substantially adverse to the petitioner’s safety, security, or privacy must be “objectively reasonable.” *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

We will not set aside the district court’s findings of fact unless they are “clearly erroneous.” Minn. R. Civ. P. 52.01. When determining whether findings of fact are clearly erroneous, we give “due regard” to the district court’s opportunity to evaluate the credibility of witnesses. *Id.* Whether the facts as found by the district court satisfy the definition of harassment is a question of law and is reviewed de novo. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). Once a petitioner shows that harassment has occurred, the decision to issue an HRO is left to the district court’s discretion. *Kush v. Mathison*, 683 N.W.2d 841, 846 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We review that decision for an abuse of discretion. *Peterson*, 755 N.W.2d at 761. A district court abuses its discretion if it grants an HRO based on conduct that is not harassment, as defined in the statute. *See Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000) (holding that the district court abused its discretion by granting an HRO where the appellant’s conduct was not intrusive and did not adversely affect the respondent).

The Lindemanns raise two challenges to the issuance of the HRO. First, they argue that the district court erred as a matter of law because, they assert, it concluded that

harassment had occurred based on a single incident of intrusive or unwanted conduct despite the statutory requirement of multiple incidents. See Minn. Stat. § 609.748, subd. 1(a)(1). Second, they argue that the district court erred by concluding that there were *any* “incidents” within the meaning of subdivision 1(a)(1) because the district court’s findings do not support its conclusion that their conduct had a substantial adverse effect on Nesmoe-Thompson’s safety, security, or privacy. To resolve these arguments, we evaluate each incident identified by the district court.

### **1. The track meet**

The district court ruled that the incident at the track meet, when Margie Lindemann and Nesmoe-Thompson collided, constituted both “threats” and “threatening behavior” by Margie Lindemann. It concluded that those threats had a substantial adverse effect on Nesmoe-Thompson’s safety, security, or privacy. The Lindemanns argue that the doctrine of collateral estoppel precludes this conclusion because a district court ruled otherwise in the immediately preceding HRO litigation between the parties.

Collateral estoppel is a finality doctrine that applies when four elements are established:

- (1) the issue was identical to one in a prior adjudication;
- (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

*Willems v. Comm’r Pub. Safety*, 333 N.W.2d 619, 621 (Minn. 1983) (quoting *Victory Highway Vill., Inc. v. Weaver*, 480 F. Supp. 71, 74 (D. Minn. 1979)). In evaluating whether a party had a “full and fair opportunity,” courts ask whether there were procedural

limitations in the first proceeding, whether the party had the incentive to litigate the issue, and whether any other fact limited effective litigation. *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001). If the four elements are satisfied, collateral estoppel is available. *Pope Cty. Bd. of Comm'rs v. Pryzmus*, 682 N.W.2d 666, 669 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). However, whether estoppel should be applied is a question for the district court's discretion; this court will reverse the district court only if it abused that discretion. *Id.*

With respect to the first element, in the prior action, Nesmoe-Thompson moved for an extension of the previous HRO based in part on the incident at the track meet; that motion was treated as a petition for a new HRO. *See Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004) (holding that, because the HRO statute limits the length of restraining orders to two years, a motion to extend such an order beyond two years may be considered only as a petition for a new HRO). At issue in the prior action was whether the incident at the track meet involved intrusive or unwanted acts or words that had a substantial adverse effect on the safety, security, or privacy of another. The identical issue is raised in the present action. The first element of collateral estoppel is met. *See Willems* 333 N.W.2d at 621.

The parties do not dispute the other elements, and they are plainly satisfied. There was a final judgment on the merits—the district court in the prior proceeding denied the petition because it determined that the allegations were not proven. *See id.* Nesmoe-Thompson, the party to be estopped here, was a party to the prior adjudication—she was the party who raised the claim. *See id.* Finally, Nesmoe-Thompson had a full and fair

opportunity to be heard on her claim—the record contains no indication that she was limited, procedurally or otherwise, in the prior litigation, and her incentive to litigate the issue was the same in both proceedings. *See id.*

Nesmoe-Thompson makes only one argument against the application of collateral estoppel. She contends that she should not be estopped from relying on the same incident because the judge who ruled on the prior motion to extend was different from the judge here and did not have as much knowledge of the parties and their interactions. However, no caselaw suggests that the preclusive effect of a judgment depends on the identity of the judge who rendered it. And adopting such a doctrine would make little sense, given that collateral estoppel is intended to promote judicial efficiency and to prevent a party from being “twice vexed for the same cause.” *Hauser v. Mealy*, 263 N.W.2d 803, 807 (Minn. 1978) (quotation omitted); *see also Heine v. Simon*, 702 N.W.2d 752, 762 (Minn. 2005) (Anderson, Paul H., J., plurality opinion).

The final question is whether the district court nonetheless acted within its discretion when it permitted Nesmoe-Thompson to argue that the incident at the track meet was a basis for issuing a new HRO. *Pryzmus*, 682 N.W.2d at 669. The district court did not explain its decision not to apply collateral estoppel against Nesmoe-Thompson. The record contains no suggestion that holding Nesmoe-Thompson to the prior ruling would work some injustice against her. Further, caselaw prohibits serial HRO petitions based on the same events, even if the litigants previously proved that the events actually occurred. *See Roer*, 682 N.W.2d at 182. This suggests that public policy does not favor successive petitions based on events that a petitioner has failed to prove were harassing. Because

applying collateral estoppel would neither work an injustice nor violate public policy, the district court abused its discretion by failing to bar Nesmoe-Thompson from arguing that the incident at the track meet was a basis for finding that harassment occurred. The district court therefore erred as a matter of law by basing its order on that event.

## **2. Attendance at sporting events**

The district court found that the Lindemanns engaged in a pattern of attending J.W.N.'s sporting events. It described this pattern as constituting harassment under two different clauses of the HRO statute. We address each.

### **a. Subdivision 1(a)(1)**

The district court found that, despite being told not to contact Nesmoe-Thompson's children, "the Lindemanns continued to show up at sporting events," concluding that their continued attendance had "a substantial adverse effect on [Nesmoe-Thompson's] safety, security and privacy." *See* Minn. Stat. § 609.748, subd. 1(a)(1). However, the district court never explained how the Lindemanns' attendance at sporting events, which were open to the public, negatively impacted Nesmoe-Thompson's safety or security, much less her privacy. The only relevant finding the district court made was that the Lindemanns continued to attend the events; that fact alone cannot support the court's conclusion that Nesmoe-Thompson's safety, security, and privacy were adversely affected.

Moreover, our review of the record reveals that it would not support findings that could bolster the district court's conclusion regarding the effect on Nesmoe-Thompson. In her combined affidavit and petition, Nesmoe-Thompson wrote that the Lindemanns' "presence alone is threatening" and that the Lindemanns "inflict fear, anxiety, and hostility

. . . simply by showing up, because the threat of their actions is constantly being guarded against.” She also wrote that they “create anxiety within myself and in my children, as we cannot trust that they will respect our wishes” because the Lindemanns “do not respect [Nesmoe-Thompson’s] parental boundaries.” In explaining the effect of the Lindemanns’ presence on her safety, security, or privacy, Nesmoe-Thompson wrote that she was “on constant alert, along with having constant anxiety while in attendance at my children’s sporting events and other school functions.” She said that the anxiety was causing her “health issues.”

Similarly, at trial, Nesmoe-Thompson testified that “[i]t gives [her] anxiety and stress to have [the Lindemanns] around” and that she “can’t enjoy [her] kids’ sports” because the Lindemanns sit in the parents’ section and her desire to stay away from them is stronger than her desire to sit with the other parents.

Even if the district court had found these assertions to be facts, the findings would not support the district court’s conclusion that the Lindemanns’ attendance at Nesmoe-Thompson’s children’s sporting events had a substantial adverse effect on Nesmoe-Thompson’s safety, security, or privacy. As noted above, the belief that another’s conduct substantially affects one’s safety, security, or privacy must be objectively reasonable. *Dunham*, 708 N.W.2d at 567.

Nesmoe-Thompson said that her anxiety was caused by her concern that the Lindemanns would attempt to contact her children without her consent. Contact with her children is not a threat to Nesmoe-Thompson’s safety or security. The threat, if it was a threat at all, would be to Nesmoe-Thompson’s children, but the court did not grant the

petition with respect to J.M.N. Further, Nesmoe-Thompson stated that the Lindemanns attended “too many [sporting events] to count.” Yet, by her own testimony, only at one of them did they have any contact with her children. On this record, it was not objectively reasonable for Nesmoe-Thompson to believe that the Lindemanns were a threat to her safety or security.

Caselaw indicates that “privacy,” within the meaning of the HRO statute, is connected to the constitutional definition of privacy. *See Peterson*, 755 N.W.2d at 764-65 (explaining, by reference to the reduced expectation of privacy in automobiles under the Fourth Amendment, that a respondent did not substantially affect the privacy of a pickup truck’s owner by looking through the truck’s windows). Nesmoe-Thompson’s children’s sporting events are public events. By attending them, Nesmoe-Thompson knowingly exposed her presence to the public and did not have a legitimate expectation of privacy that could be violated by others’ presence. *See Katz v. United States*, 389 U.S. 347, 351, 88 S. Ct. 507, 511 (1967) (stating that the Fourth Amendment does not protect “[w]hat a person knowingly exposes to the public”).

Thus, the district court’s conclusion that the Lindemanns’ presence at Nesmoe-Thompson’s children’s sporting events substantially affected Nesmoe-Thompson’s safety, security, or privacy was erroneous.

**b. Subdivision 1(a)(3)**

The district court also found that the Lindemanns were notified by U.S. Mail and by email that “their presence at [Nesmoe-Thompson’s] children’s sporting events . . . would be considered harassment” but that the Lindemanns nonetheless continued attending those

events. It classified this as harassment under Minn. Stat. § 609.748, subd. 1(a)(3), which defines harassment to include “a pattern of attending public events after being notified that the actor’s presence at the event is harassing to another.”

The only notice in the record that was sent by both mail and email did not state that the Lindemanns’ presence at sporting events would be considered harassment. Rather, the message stated that the Lindemanns were “to have absolutely no unsupervised contact with” Nesmoe-Thompson’s minor children. This court has held that “contact,” when used in a no-contact order, is plainly understandable, meaning “coming together or touching, as of objects or surfaces,” “[t]he state or condition of touching or of immediate proximity,” or “[c]onnection or interaction; communication.” *State v. Phipps*, 820 N.W.2d 282, 286 (Minn. App. 2012) (alterations in original) (quoting *The American Heritage College Dictionary* 299 (3d ed. 2000)). The same plain meaning is equally applicable to Nesmoe-Thompson’s notice to the Lindemanns. Attendance at a sporting event, by itself, is not “contact” with a person who is participating in the event. Thus, the message sent to the Lindemanns did not notify them that their presence would be considered harassment, and the district court clearly erred by finding that it did provide that notice.<sup>2</sup> The Lindemanns’ attendance at the sporting events therefore was not harassment under Minn. Stat. § 609.748, subd. 1(a)(3).

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<sup>2</sup> We also note that the prior HRO had expressly permitted the Lindemanns to attend the children’s sporting events, while prohibiting both direct and indirect contact with either Nesmoe-Thompson or her minor children. Nesmoe-Thompson’s communication gives no indication that her parental prohibition on contact would be broader than the prohibition on contact contained in the expired HRO.

### 3. The hockey game

The only remaining event that could be an “incident” within the meaning of the statute is the interaction between the parties at the hockey game. If that interaction is only a single incident, it cannot support the conclusion that the Lindemanns engaged in harassment; harassment requires “repeated incidents.” *Peterson*, 755 N.W.2d at 766. Nesmoe-Thompson makes several arguments for why that event supports the determination of harassment. See Minn. Stat. § 609.748, subd. 1(a)(1).

First, she contends that, because the incident affected multiple people—namely herself and J.M.N.—it should count as multiple incidents. She argues that the Lindemanns’ conversation with J.M.N. had a substantial adverse effect on his safety, security, or privacy, that it had the same adverse effects on her, and that it therefore constitutes repeated incidents of intrusive or unwanted conduct. This argument fails for several reasons. First, “harassment” in the statute is relevant with respect to “a victim.” See Minn. Stat. § 609.748, subd. 2 (authorizing “a victim of harassment” to seek an HRO or “[t]he parent . . . of a minor who is a victim of harassment” to seek an HRO on behalf of the minor). The fact that an incident of intrusive or unwanted behavior affects multiple people simply means that there are multiple victims; it does not mean that there are multiple incidents with respect to a single victim. Second, Nesmoe-Thompson’s argument appears to be based on the premise that J.M.N. is a victim of harassment. But the district court did not grant the petition with respect to J.M.N.; the HRO applies only to Nesmoe-Thompson herself. The district court did not conclude that J.M.N. was a victim of harassment.

Next, Nesmoe-Thompson argues that the district court can count incidents that formed the basis for the initial HRO when determining whether there have been “repeated incidents.” This argument is inconsistent with the HRO statute. Relief granted by a restraining order “must be for a fixed period of not more than two years.” Minn. Stat. § 609.748, subd. 5(b) (2018). If conduct that formed the basis of a previous HRO could be the basis for a new HRO, the two-year limit would be rendered meaningless because the victim could re-allege the same facts at the end of the two-year period and receive a new restraining order. Caselaw indicates that a second HRO must be based on new conduct. In *Roer*, we held that the district court could “extend” an HRO beyond the two-year limit by, in effect, granting a new HRO, so long as the statutory requirements for an initial HRO proceeding were satisfied. 682 N.W.2d at 182. In explaining why the requirements for an initial HRO proceeding were met in that case, we stated that “[t]he district court’s [conclusion of] harassment was based on recent events, not on the events on which the initial order was based.” *Id.* Thus, a district court cannot base a new HRO on conduct that has been the basis for a previous HRO.

Finally, Nesmoe-Thompson argues that there were repeated incidents by counting the initial interaction with J.M.N. as one incident of harassment against her and then counting the shouting after she returned to the hockey arena as a second incident. We need not decide whether a few minutes of separation can transform one incident into two because Nesmoe-Thompson’s argument is unsupported by the district court’s order. The district court never mentioned the Lindemanns’ contact with J.M.N. When a district court does not make findings regarding certain allegations, we “may assume that the district court rejected

those grounds for issuance of the HRO.” *Peterson*, 755 N.W.2d at 766. The district court here did not determine that the Lindemanns’ contact with J.M.N. was an incident supporting a finding of harassment, and it therefore cannot be one of the repeated incidents required by statute. *See* Minn. Stat. § 609.748, subd. 1(a)(1).

The incident at the hockey game was, at most, a single incident of intrusive or unwanted acts, words, or gestures. *See id.* The district court erred in concluding that harassment occurred because a single incident of that type cannot constitute harassment. *Peterson*, 755 N.W.2d at 766-67. Because the district court’s conclusion that harassment occurred was erroneous, the district court abused its discretion by granting the HRO.<sup>3</sup>

**Reversed.**

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<sup>3</sup> The Lindemanns argue that the evidence does not support the district court’s determination that their conduct at the hockey game had or was intended to have a substantial adverse effect on Nesmoe-Thompson’s safety, security, or privacy. We need not reach that argument because, even if it did have that adverse effect, that single incident would be insufficient to support an HRO.