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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1183**

Jason McKenzie,
Respondent,

vs.

Aaron Louis Olson,
Appellant.

**Filed May 13, 2019
Affirmed
Florey, Judge**

Dakota County District Court
File No. 19AV-CV-18-586

Jason McKenzie, Burnsville, Minnesota (pro se respondent)

Aaron Louis Olson, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Connolly, Presiding Judge; Florey, Judge; and Kirk,
Judge.*

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

UNPUBLISHED OPINION

FLOREY, Judge

Appellant challenges the district court's grant of a harassment restraining order (HRO), arguing that respondent failed to prove that appellant "personally" harassed him. Because we see no abuse of discretion in the granting of the HRO, we affirm.

FACTS

Respondent Jason McKenzie owns and operates a skating rink in Burnsville, Minnesota, called Skateville. Appellant Aaron Louis Olson was a patron at the skating rink. Following allegations of inappropriate behavior between appellant and minor girls at the skating rink, respondent pursued an informal investigation.

In the process of respondent's investigation, appellant sent several threatening emails to respondent and his business.¹ On February 1, 2018, respondent provided a trespass notice to appellant and told him in a phone conversation that he did not feel comfortable having any further communication with him. Appellant continued to contact respondent.

On March 14, 2018, respondent filed an affidavit and petition for an HRO against appellant.² In the petition, respondent alleged that, despite telling appellant to stop contacting him, appellant continued to call and email. He stated that appellant had violated a current restraining order that morning.

¹ The emails were not offered or admitted into evidence.

² At the time respondent petitioned for an HRO in March 2018, there was a restraining order against appellant in effect in another case.

In his petition, respondent stated that appellant's conduct "had a substantial adverse effect on [his] personal life as well as at work." He alleged that appellant threatened him by stating that, when he "comes near" Skateville, "it could become a deadly situation." The petition requested a two-year restraining order, and respondent asked that the district court both prohibit appellant from contacting and harassing him and order appellant to stay away from Skateville. The district court issued an ex parte HRO, and appellant requested a hearing.

In April 2018, the district court conducted a hearing and received testimony from both respondent and appellant. Neither party was represented. Respondent testified that appellant continued to call and email him despite being asked, on February 1, 2018, to cease all communications. Respondent testified that, on February 2, 2018, he again told appellant that he was not comfortable having any interactions with him.

Respondent testified that appellant continued to call his work and ask to speak with patrons at the skating rink, despite being aware of the trespass notice and being told that respondent "would not grab a minor customer of [his] to have a conversation with [appellant]." Respondent testified that appellant continued to communicate with him until February 6, 2018, when respondent petitioned for an HRO on behalf of Skateville.³ Respondent further testified that officers at two different police departments had past

³ Respondent testified that he had originally petitioned on behalf of Skateville, but he dismissed the case before the district court issued an HRO because he did not want to incur legal fees for having to be represented.

interactions with appellant and advised respondent that he should get an HRO “on top of the trespass notice for extra protection.”

Respondent did not offer into evidence copies of the email exchanges or records of the phone calls between him and appellant. He stated to the court: “I guess I kind of assumed that you had copies of all these e-mails that I sent. Do you not? I didn’t know it was my job to provide exhibits to you.”

Appellant denied communicating with respondent after being told to stop. He testified that he had received threats from patrons of the skating rink, and his purpose in contacting Skateville was to inform the business that he was “getting death threats and threats of great bodily harm.”⁴ Appellant disputed that respondent told him “anything that would leave any reasonable person to believe to stop communicating.” He testified that he was “primarily communicating” with the manager of Skateville, and that respondent, as the owner of the skating rink, “was really copied [on emails] on what [appellant] was sending to [the manager].”

During cross-examination, respondent read into the record emails, dated February 1, 2018, and February 2, 2018, that were addressed to him from appellant. Appellant

⁴ Appellant offered into evidence a copy of a threatening email he allegedly received from “some patrons at Skateville.” He also offered into evidence a disc with recorded telephone conversations from February 2018. The recorded conversations included calls between appellant and employees of Skateville, appellant and a police officer wherein appellant inquired about the trespass notice, and appellant and respondent—including a call made by appellant on February 11, 2018, after respondent had already instructed appellant to cease all communications. At the hearing, appellant stated that he had recorded the telephone conversations with a dictation device and had not informed the recipients of the calls that they were being recorded.

objected, stating that respondent was reading from emails not entered into evidence. The district court overruled appellant's objection. In the email dated February 2, 2018, appellant wrote to respondent: "I think the police have informed me now of the seriousness of the threats against me. If anyone picks a fight with me out there, it unfortunately is a situation that does have the potential of turning deadly." Appellant disputed that the email had a substantial adverse effect on respondent.

The district court issued an HRO. The court determined that there were "reasonable grounds to believe" that appellant harassed respondent by contacting him "by phone calls or email multiple times in February 2018 after [appellant] was notified to stop such communication," and that the harassment was "intended to have a substantial adverse effect on [respondent's] safety, security or privacy." The HRO provided that appellant was prohibited from being within 300 feet⁵ of respondent's business, and the order was to remain in effect for two years.

Appellant disputed the district court's findings and filed several motions, and amended motions, over the next two months. In June 2018, the district court conducted a hearing on appellant's motions and received testimony from both parties. Appellant argued that it was unreasonable for the district court to include a physical proximity limitation (300 feet from Skateville) in the HRO. He contended that "[i]t is against fundamental fairness and the public good to penalize [appellant] by restricting his liberty . . . because [appellant] is the innocent victim of death threats and other hate crimes."

⁵ The original HRO did not specify the unit of distance, however, the district court later clarified that the unit of distance was feet.

Respondent requested that the restriction stay in effect. He testified, “I am not trying to use this from a business standpoint. I feel personally very harassed by [appellant]. I didn’t ask for the 300 feet to be specifically on the business. That’s something that was done through the courts, but I would certainly like to also get that in place at my house.” The district court declined to apply the restriction to respondent’s home, stating, “It wasn’t requested earlier and you didn’t give notice to [appellant] that you would be making that request today.” The district court took the matter under advisement.

In July 2018, the district court issued an order denying appellant’s motions. Appellant appealed.⁶

D E C I S I O N

I. The district court did not abuse its discretion when it issued an HRO against appellant.

“An appellate court reviews a district court’s grant of a harassment restraining order under an abuse-of-discretion standard.” *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). The district court’s fact findings “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.” *Id.* at 843-44. “But this court will reverse the issuance of a restraining order if it is not supported by sufficient evidence.” *Id.* at 844.

⁶ During the pendency of appellant’s appeal, he filed, in both district court and this court, several motions, including to correct alleged errors in the transcripts of the hearings. With the exception of changing one word on the April 2018 hearing transcript, the district court denied appellant’s motions.

“A district court’s authority to issue an HRO is granted by statute.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008); see Minn. Stat. § 609.748, subd. 5 (2018). A court may issue an HRO ordering an individual “to cease or avoid the harassment of another person” or “to have no contact with another person” if the court finds “that there are reasonable grounds to believe that the [individual] has engaged in harassment.” Minn. Stat. § 609.748, subd. 5. 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.*, subd. 1(a)(1) (2018). An HRO based on “repeated incidents” requires at least two specific instances of harassing conduct. See *Kush*, 683 N.W.2d at 844.

The HRO statute requires proof of 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). Objectively unreasonable conduct “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. *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000). However, testimony suggesting that a petitioner “can handle” the effects of the harasser’s conduct “does not negate evidence that [the harasser’s] conduct was unwanted and intrusive, and had a substantial adverse effect on [the petitioner].” *Kush*, 683 N.W.2d at 845.

Appellant contends that the district court abused its discretion by finding that respondent had proved conduct by appellant “that constitutes (personal) harassment.” He argues that the court failed to distinguish respondent’s “personal harassment action” from respondent’s attempt to protect his business. Without citing authority, appellant asserts that “an attempt by a petitioner to protect his corporation, even in part, through a personal HRO action, is contrary to law in Minnesota.”

Appellant also appears to imply that the district court failed to review the recorded telephone conversations that were admitted into evidence, stating: “All indication is that the [d]istrict [c]ourt ruled as it stated it would at [the] hearing, with no regard for the content of communication exchanged between [a]ppellant and [r]espondent and only focused on the timing and volume of [a]ppellant’s communication attempts with [r]espondent.” He argues that “[a]ll evidence in record clearly proves” that respondent “understood [a]ppellant’s statements regarding death threats reflected a concern [that] [a]ppellant had for *his own* life and safety relative to third parties, and that [r]espondent received those statements as intended by [a]ppellant.” (Emphasis in original.) Appellant further argues that the district court allowed respondent to quote from “evidentiary sources that were not received into evidence,” and that appellant “had no opportunity to cross-examine on this wrongly taken testimony from [r]espondent.”

Respondent argues that the district court did not err in granting an HRO. He contends that the court correctly found that appellant continued to communicate with him after respondent told him to stop. Respondent argues that the district court properly found that appellant’s unwanted conduct had a substantial adverse effect on respondent. He

argues that the HRO benefits both himself and the patrons of his business—including minor girls with whom appellant has had inappropriate contacts. Respondent further argues that the district court did not make any evidentiary errors. He argues that the email evidence constituted a statement by an adverse party, and further, appellant had the opportunity at the hearing to cross-examine and challenge respondent’s testimony.

We conclude that the district court did not abuse its discretion by issuing an HRO against appellant. Although several alleged emails and phone calls were not admitted into evidence, and thus are not available for review on appeal, the district court’s issuance of the HRO is sufficiently supported by the record. *See Kush*, 683 N.W.2d at 844.

At the April 2018 hearing, the district court instructed the parties, both of whom were unrepresented, that the purpose of the hearing was to determine the following: “Was notice given? Was it received? Were there multiple communications by [appellant] after that or not?” The district court heard from respondent and appellant, and both parties had the opportunity to cross-examine each other.

Respondent’s testimony provided reasonable grounds for the district court to find that appellant had engaged in harassment. *See* Minn. Stat. § 609.748, subd. 5. Respondent testified that notice was both given to and received by appellant, and, despite having notice that respondent wanted to cease all communications with him, appellant continued to engage in repeated incidents of intrusive or unwanted acts—acts that respondent demonstrated had a substantial adverse effect on his safety and security. *See id.*, subd. 1(a)(1).

Specifically, respondent testified that, on February 1, 2018, he both (1) sent a trespass notice to appellant forbidding him from being on Skateville's premises and (2) told appellant, during a phone conversation, that he wanted no further communication from him. Respondent also testified that, after notifying appellant that he did not want any further communication with him, both on February 1, 2018, and February 2, 2018, "[respondent] continued to get e-mails and calls," including an email on February 2, 2018, wherein appellant stated: "I think the police have informed me now of the seriousness of the threats against me. If anyone picks a fight with me out there, it unfortunately is a situation that does have the potential of turning deadly."

Respondent testified that appellant continued to contact him or his business "until [respondent] filed a harassment restraining order through Skateville, which was February 6th." Respondent testified that officers at two different police departments had past interactions with appellant and advised respondent that he should "put in a harassment restraining order on top of the trespass notice for extra protection."

Appellant argues that the district court abused its discretion by permitting respondent to quote from emails between the parties that were neither received, nor offered, into evidence. At the April 2018 hearing, appellant objected to respondent's reading of the emails, and the district court overruled appellant's objection. "Entitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error," and "[i]n the absence of some indication that the [district] court exercised its discretion arbitrarily, capriciously, or contrary to legal usage, the

appellate court is bound by the result.” *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 46 (Minn. 1997) (quotation omitted).

The district court did not exercise its discretion arbitrarily, capriciously, or contrary to legal usage. Respondent properly read into the record appellant’s threatening email, dated February 2, 2018, as a statement by a party-opponent. See Minn. R. Evid. 801(d)(2). The email, combined with appellant’s call to Skateville on February 11, 2018—a recording of which was offered into evidence by appellant himself—constitute “repeated incidents of intrusive or unwanted acts” that were “objectively unreasonable,” and likely to have “a substantial adverse effect” on respondent’s safety or security. See Minn. Stat. § 609.748, subd. 1(a)(1); *Dunham*, 708 N.W.2d at 567. Appellant has failed to demonstrate prejudicial error.

Furthermore, we must defer to a district court’s credibility determinations. The district court was aware that respondent’s testimony referred to some email exchanges that were unavailable at the time of the hearing, as respondent admitted to the court, “I realize I don’t have all the e-mails in front of me or with me, but, again, I have several e-mails and phone calls and I just don’t anticipate that they are going to stop coming.” The district court was also aware that appellant alleged himself to be the victim of the matter, as appellant testified to the court that his initial purpose in contacting Skateville was to report alleged death threats by patrons of the skating rink.

In issuing the HRO against appellant, the district court found respondent’s testimony to be more credible. See *Kush*, 683 N.W.2d at 843-44 (“[D]ue regard is given to the district court’s opportunity to judge the credibility of witnesses.”). And, although

the district court’s order merely states that appellant “contacted [respondent] by phone calls or email multiple times in February 2018 after [appellant] was notified to stop such communication,” we have stated that “the lack of specificity is not fatal to the district court’s findings.” *Kush*, 683 N.W.2d at 844.

Lastly, appellant argues that “an attempt by a petitioner to protect his corporation, even in part, through a personal HRO action, is contrary to law in Minnesota.” Appellant fails to cite any relevant authority to support this proposition. Generally, appellate courts decline to address inadequately briefed questions. *See Minn. Sands, LLC v. Cty. of Winona*, 917 N.W.2d 775, 782 n.3 (Minn. App. 2018) (concluding issue not properly briefed was forfeited); *Minn. Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997).⁷ “Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Even if the issue was properly before our court, the type of relief granted by the district court—prohibiting appellant from being within a

⁷ It does appear that appellant raised this issue, at least to some degree, in district court, but that the district court rejected appellant’s argument. At the June 2018 hearing, appellant argued, “What [respondent] has admittedly done is to seek to litigate the claims on the part of his business that were previously barred in this court from being litigated without an attorney. Petitioner would be bypassing the law if a physical distance limitation were placed on [appellant] relative to [respondent’s] business pursuant to the facts of this case.” The district court asked appellant if there was “any important business that [he] need[ed] to conduct within 300 feet of [Skateville],” and appellant stated: “Yes, Your Honor. I conduct business with all of the businesses there; the antique business across, next door, Grand Slam across the street. It’s problematic to have any physical restriction on me and unwarranted under the circumstances.” The district court was not persuaded.

certain distance of respondent's business—is expressly permitted on the statewide HRO court form.

Because there was sufficient evidence to support the district court's issuance of an HRO, and there is no indication that the district court abused its discretion, we affirm.

Affirmed.