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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1185**

Emily Peterson, petitioner,
Respondent,

vs.

Scott Howard Meyer,
Appellant.

**Filed May 20, 2019
Affirmed
Stauber, Judge***

Olmsted County District Court
File No. 55-CV-17-6987

James A. McGeeney, Doda & McGeeney, P.A., Rochester, Minnesota (for respondent)

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Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Stauber, Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

Appellant disputes that messages he sent to respondent constitute repeated incidents of harassment necessary to support the district court's issuance of a harassment restraining order under Minnesota Statutes section 609.748, subdivision 5(b)(3) (2018). Appellant also argues that the harassment restraining order is vague and overbroad. We affirm.

FACTS

Appellant Scott Howard Meyer and respondent Emily Peterson, who were never married, share a son who was born approximately nine years prior to the harassment restraining order (HRO) hearing. Since the birth of their son, Meyer and Peterson have been engaged in a "significantly contentious" battle over their son. Eventually, the parties resorted to communicating with one another through OurFamilyWizard (OFW), a messaging application which offers web based and mobile phone based solutions for divorced or separated parents to communicate.

On October 4 and October 5, 2017, Meyer and Peterson exchanged electronic correspondence via OFW. The following messages were exchanged between the parties on October 4, 2017:

SM (9:43 p.m.): If you don't plan on showing up Friday in court, please let me know so that you don't ruin Colin's weekend in Duluth for no reason. He was very much looking forward to going up there tonight.

EP (10:09 p.m.): Don't turn this on me, this is all you and your obnoxious court filings.

SM (10:11 p.m.): This is and always has been all you with your kidnapping of Colin, your constant lies and manipulative actions, and your vindictive and immature behavior. Right from the start.

EP (10:12 p.m.): Nine years Scott! Please find something else in life to enjoy.

SM (10:25 p.m.): No kidding Emily. Get a life and leave me and Colin alone during my parenting time.

Give me a passport and there'd be no reason to go to court Friday.

But I guarantee you, Martie,¹ I will never forgive or forget or let go of what you did by stealing Colin from me and his siblings then continually interfering with our relationship with him. 9 years is just the beginning. I've only just begun with you.

SM (10:28 p.m.): And the constant lies. Lie after lie after lie. I have it all laid out perfectly. And when Colin is older, I'll show him everything in addition to the public display of all your behavior. You know I'm not all talk Emily. I will follow through. You have only seen the tip of the iceberg from me in your life.

EP (10:29 p.m.): Please don't threaten me Scott. I don't appreciate your tone and hostility.

SM (10:32 p.m.): It's not a threat Emily. It will happen. I don't make idle threats. You already know that. I will ruin you. No physical violence of course. I will just put on display everything you've done for your son and the entire world to see. It's already in the works.

EP (10:32 p.m.): I have nothing to be ashamed of and I pray some day you will move on from your obsession with me and your vendetta against me. Life is good and you should learn to love it and not lead a life of hate and anger. It is not a good path to follow and Colin should not be exposed to these actions.

¹ Martie is Meyer's ex-wife.

SM (10:40 p.m.): Your words are hollow Emily. They have no meaning just like you. You are a shell. So full of lies you don't know whether you're coming or going.

But thank you for your wishes. I would rather hold you accountable and pay the consequences for your actions (that continue to this day) than do anything else in my life. And if you haven't already noticed, my children are doing very well under my guidance and parenting. We will see how well yours do.

You picked the wrong person to screw over Emily. I thought you would have known that after watching Martie. But it didn't matter because you are as sick and pathologic as she is. You two are one in the same.

I will do everything in my power legally and publicly to hold you accountable for your actions until the day I die. I will never go away Emily. And Colin will eventually know everything about you. My other three, Colin's siblings, already do. You are far from getting away with what you have done and continue to do.

SM (10:43 p.m.): 9 years is only just the beginning. I'm a patient man and I don't mind losing. But I will never go away. And when I'm gone, my children will take up the fight for me.

On October 5, 2017, Meyer wrote Peterson the following message through OFW:

SM (12:14 p.m.): The court has requested some type of new settlement document. They will not tell me if they want a new settlement effort or just a refile of the prior document. The games you and the court play just to keep me from parenting my son are truly ludicrous and childish. If you and the court haven't figured it out yet, I will just keep coming back regardless of the illegal obstacles you put in my way. And in less than three years, I'll have Ashlye and Josh fighting for me. I've filed appeals and even a writ to the Supreme Court. I don't care about losing or any of your or the corrupt judges' rhetoric. I only care about my children. I will fight to the end for them.

Just as an FYI, I'm writing a book and naming names. It's all documented and I've been waiting a long time for this. And you can disregard what I say but you know I always follow through. You and everyone involved will be outed.

I want a passport for my son so I can take him where I want and when I want without you or anyone else interfering. Show I'm an unfit parent and then you and the court can interfere all you want. Until then, stay out of my personal life which included my parenting.

Give me a passport and agree to not interfere in my parenting and I'll let this next hearing go. Otherwise, it is already rescheduled for May 4 2018 at 9:30 am with Ms. Stevens. If we wait long enough (just a couple more years), I'll have plenty of legal representation.

I will also make sure the court gets a copy of all my correspondences to you including these on this app.

Peterson sought an ex parte HRO. A hearing was held; Peterson and Meyer both testified. Following the hearing, the district court determined that Meyer's messages to Peterson from October of 2017 constituted repeated incidents of harassment and issued an HRO.

Meyer appeals.

D E C I S I O N

I. Standard of Review

"[T]he issuance of an HRO is reviewed for abuse of discretion." *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). This court will reverse the issuance of an HRO only if the issuance is not supported by sufficient evidence. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). "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.” *Id.* at 843-44. “Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made.” *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). We review questions of law de novo. *Peterson*, 755 N.W.2d at 761.

II. The HRO is supported by sufficient evidence of harassment.

Minnesota law allows the district court to issue an HRO upon a finding that “there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3). The term 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, regardless of the relationship between the actor and the intended target.”² *Id.*, subd. 1(a)(1). 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). Objectively unreasonable conduct includes conduct that “goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect

² The definition of harassment also includes (1) “a single incident of physical or sexual assault”; (2) “a single incident of stalking”; (3) “a single incident of nonconsensual dissemination of private sexual images”; (4) “targeted residential picketing”; and (5) “a pattern of attending public events after being notified that the actor’s presence at the event is harassing to another,” none of which are relevant here. Minn. Stat. § 609.748, subd. 1(a) (2018).

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).

Here, Meyer argues that his language, while inappropriate and argumentative, is insufficient to support a finding of harassment because his comments were not analyzed in the proper context. In *Witchell*, an HRO was issued against husband for messages he left his wife in their child-visitation notebook, including: (1) “Joint legal and joint physical is what I want, and what you swore you would agree to for years and years if we got a divorce”; (2) “Please stop telling me what I need to do. Where I choose to go, and who I choose to see is my decision we are separated”; (3) “Please do not use this book to threaten me”; (4) “This is the intent and purpose of child support which I pay on a monthly basis at the maximum rate. I will have my lawyer call your lawyer sometime to explain.” *Id.* This court determined that *Witchell*’s comments, considered within their “context,” did not constitute harassment. *Id.* Meyer argues that the district court abused its discretion by failing to consider Meyer’s comments within “the context of the entire conversation and within the context of the parties’ ongoing legal dispute.” However, Meyer’s behavior is substantially different than the parties in *Witchell* because Meyer made multiple statements which were not related to parenting time or child support. Moreover, the district court need not analyze Peterson’s conduct in its HRO, because the question before the district court “was not why appellant conducted himself in the manner he did, but whether appellant’s actions had, or were intended to have, a substantial adverse effect on the safety, security, or privacy of respondent.” *Kush*, 683 N.W.2d at 844.

Meyer also argues that Peterson failed to prove that there were repeated incidents of intrusive or unwanted words. Though the district court considered two dates—October 4 and October 5—to support its finding of harassment, Meyer argues that the statements he made on October 5 were not harassment. Meyer cites to *Peterson* and *Beach* to support the proposition that numerous threats that are made as part of a single conversation—in this case, on October 4—constitute only a single incident under the statute. See *Peterson*, 755 N.W.2d 766 (holding that the HRO was improperly issued upon only one incident of harassing conduct); see also *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002) (holding that a “two-sentence statement, uttered on one occasion, does not meet the requirement of ‘repeated incidents’”).

We are not persuaded by Meyer’s argument because there is sufficient evidence in the record to support the ongoing harassment of Peterson. Peterson testified Meyer messaged her outside the parameters of parenting their child “all the time” and that she has asked him to stop threatening her “numerous” times.³ The district court considered two dates—October 4 and October 5—in its order, to support its finding of harassment. The messages on October 4 clearly constitute harassment. For example, on October 4, Meyer messaged Peterson: (1) “I’ve only just begun with you”; (2) “You have only seen the tip

³ Evidence of a prior OFW conversation on March 9, 2016, between Meyer and Peterson was admitted during the hearing which ended with Peterson messaging Meyer: “Please stop harassing me with this and I do not appreciate the way you talk to me.” However, the district court did not include this instance in its HRO. “Accordingly, this court may assume that the district court rejected those grounds for issuance of the HRO.” *Peterson*, 755 N.W.2d at 766 (citing *Kroning v. Kroning*, 356 N.W.2d 757, 760 (Minn. App. 1984) (district court “considered and rejected” argument because court “did not make a specific finding” on the issue)).

of the iceberg from me in your life”; (3) “I will ruin you”; and (4) “I will never go away. . . when I’m gone, my children will take up the fight for me.” The October 5 comments reiterated some of the threatening themes from the October 4 conversation. For example, on October 5, Meyer messaged Peterson:

If you and the court haven’t figured it out yet, I will just keep coming back regardless of the illegal obstacles you put in my way. And in less than three years, I’ll have Ashlye and Josh fighting for me. . . .

Just as an FYI, I’m writing a book and naming names. It’s all documented and I’ve been waiting a long time for this. And you can disregard what I say but you know I always follow through. You and everyone involved will be outed.

“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*, 683 N.W.2d. at 843-44. The record supports the finding that Meyer perpetrated “repeated incidents of intrusive or unwanted acts, words, or gestures” that were “intended to have a substantial adverse effect on the safety, security or privacy” of Peterson. See Minn. Stat. § 609.748, subd. 1(a)(1). Accordingly, we determine that the district court did not abuse its discretion in its issuance of the HRO.

III. The HRO is not vague or overbroad.

Meyer also argues that the district court’s order is overbroad and vague as applied to him. A law “is unconstitutionally overbroad as applied if it prohibits constitutionally protected activity in the particular context of the facts and circumstances of the case.” *State v. Hall*, 887 N.W.2d 847, 856 (Minn. App. 2016), *review denied* (Minn. Feb. 22, 2017). Meyer argues that the HRO is overbroad because it unconstitutionally punishes his First

Amendment right⁴ to criticize Peterson and threaten her with publication of a book. This argument is unavailing. First, we see nothing in the HRO that prohibits publication of a book. Second, Meyer’s argument that the HRO is overbroad because it prohibits him from criticizing Peterson’s parenting to Peterson is unpersuasive. To illustrate his point, Meyer offers this court a hypothetical: “But what if [Meyer] legitimately suspected [] Peterson of child neglect and felt the need to send her a message telling her that her behavior must change or else he will report her to child protective services?” We note that if Meyer, in good-faith, believed that his child was being neglected or abused, the HRO does not prohibit him from reporting that to the proper authorities. *See Peterson*, 755 N.W.2d 765-66 (providing that it is not harassment to call law enforcement regarding concerns of child abuse and endangerment if done in good faith).

Meyer argues that the HRO is vague because a reasonable person would be confused as to the type of conduct the order prohibits. An order is unconstitutionally vague if persons of “common intelligence must necessarily guess at its meaning and differ as to its application.” *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391, 46 S. Ct. 126, 127 (1926). The HRO prohibits Meyer from harassing Peterson, but provides that Meyer “may have contact with [Peterson] through Our Family Wizard to discuss child-related issues only” and “[t]he parties may also have direct contact while participating in any court-ordered

⁴ We note that this court has previously determined that the harassment statute is narrowly tailored to regulate unprotected conduct and does not implicate the First Amendment, likening that conduct to “fighting words,” “true threats,” or an invasion of privacy. *Dunham*, 708 N.W.2d at 565-66. “[T]he harassment statute on its face is not a time or place restriction on speech in a public forum Instead, it is directed at repeated intrusive or unwanted conduct that potentially could occur at any time or place.” *Id.* at 565.

ADR process,” but “[n]o other forms of contact are permitted.” We determine that an individual with “common intelligence” could understand the clear parameters of the HRO and would not have to guess at its meaning.

Affirmed.