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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1553**

Ripley Karen Bresson,
Respondent,

vs.

Jason James Ourada,
Appellant.

**Filed May 6, 2019
Affirmed
Peterson, Judge***

Redwood County District Court
File No. 64-CV-18-493

Charles E. Nelson, Jonathan M. Bye, Ballard Spahr LLP, Minneapolis, Minnesota (for
respondent)

Thomas M. Beito, Beito & Lengeling, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Ross, Judge; and Peterson,
Judge.

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a harassment restraining order (HRO), appellant argues that the district court erred when it (a) denied him his right to cross examine witnesses; (b) based its ruling, in part, on hearsay evidence; (c) based a factual finding on an allegation in respondent's petition that was not proved during the hearing on the petition; (d) failed to recognize that certain conduct was not harassment; (e) based the HRO on conduct that was not a violation of any prior HRO; and (f) granted a temporary ex parte HRO based on a previously adjudicated incident. We affirm.

FACTS

In 2014, the district court granted respondent Ripley Karen Bresson an ex parte HRO against appellant Jason James Ourada based on the court's finding that there were reasonable grounds to believe that Ourada harassed Bresson by physically or sexually assaulting her.¹ The HRO prohibited Ourada from having any direct or indirect contact with Bresson and from being within 500 feet of Bresson's address in Vesta, Minnesota, and stated that the HRO was in effect until July 8, 2016 (Case No. 64-CV-14-487). Ourada did not challenge the HRO.

On July 1, 2016, Bresson filed a petition for a second HRO, and, on July 5, 2016, the district court issued an ex parte HRO against Ourada based on the court's finding that there were reasonable grounds to believe that Ourada harassed Bresson by physically or

¹ In March 2016, Ourada was convicted of fifth-degree criminal sexual conduct for a 2014 assault on Bresson. (Case No. 64-CR-16-23).

sexually assaulting her. (Case No. 64-CV-16-494). The second HRO stated that it was in effect until July 5, 2018, and prohibited Ourada from having any direct or indirect contact with Bresson and from being within 250 feet of Bresson's address in Vesta and her job site in Tracy, Minnesota. Ourada did not challenge the HRO.

On July 2, 2018, Bresson filed a petition for a third HRO against Ourada. The petition stated that two previous restraining orders had been in effect, that Ourada sexually assaulted Bresson on July 1, 2014, and charges were filed, and that, "[i]n June or July of 2015 [Ourada] attended a wedding located near [Bresson's] residence and law enforcement was called." The petition also stated that Bresson believed that the harassment will continue because "[i]t has never stopped. [Ourada] has violated previous orders and law enforcement was contacted. Consequences of breaking the law do not seem to affect [Ourada]." Bresson requested a restraining order for a period of up to 50 years because she had two prior restraining orders against Ourada.

On the day that Bresson filed her third petition, the district court issued a temporary ex parte HRO to remain in effect until July 2, 2043. The district court found that there were reasonable grounds to believe that Ourada harassed Bresson by physically or sexually assaulting her, and the order prohibited Ourada from harassing Bresson, from having any direct or indirect contact with Bresson, and from being within 500 feet of her home address² and her job site in South Dakota. The order also required Ourada to "stay away from" Bresson's property in Vesta, but it did not specify how far away he needed to stay. Finally,

² Bresson now lives in South Dakota.

the order stated that a hearing would be held on July 16, 2018, because “[Bresson] requested a restraining order for longer than 2 years and the court wants more information about the need for a longer restraining order.” A Redwood County deputy sheriff personally served Ourada with the temporary ex parte HRO on July 6, 2018.

Bresson and Ourada both appeared pro se at the July 16 hearing. The district court asked Ourada what he wanted to address, and Ourada said that the ex parte order gave an address for Bresson’s property in Vesta, but it did not give a number of feet that he needed to stay away. The district court responded that it could provide some clarity and asked Bresson what she was requesting. Bresson said that the two previous HROs stated 500 feet. Ourada said that the bank and the post office were within 500 feet of Bresson’s property and that the previous HRO stated 250 feet.

The district court acknowledged that 500 feet would prohibit Ourada from being in most of Vesta and then asked Ourada, “Do you want to have a contested hearing today, do you want to agree to the issuance of the order for protection without any factual findings, or do we want to take testimony, so I can make factual findings on the underlying request for the Harassment Restraining Order?” Ourada answered, “Well, we should have testimony.” The district court said that it was still not clear about what Ourada was challenging and asked, “Are you challenging the issuance of this order at all or do you just want a reasonable distance from the Vesta property so you can still go to the bank?” Ourada answered that he was “challenging yes, because of the 25 years and the address in Vesta.” Both parties were then sworn, and the district court took their testimony.

Bresson testified that, on July 14, 2018, she saw Ourada in the bar across the street from her property in Vesta. She called law enforcement, and Ourada left within two minutes after she entered the bar. She also testified that, in June or July of 2016, she called law enforcement because Ourada was at a hall within 500 feet of her property, and Ourada left. Bresson testified that those were the only times that she had called law enforcement. Finally, Bresson testified that, on July 3, 2018, her boyfriend saw Ourada in the bar in Vesta and had a brief conversation with him.

Bresson told the court that she thought that she needed an HRO for 50 years because Ourada is “getting more comfortable violating the conditions” and she does not “believe his behavior will change.” She said that getting an HRO every two years makes it hard to move on with her life because it makes her “relive the assault and have to just go through everything again.”

Ourada testified that he was in the Vesta bar on July 14, 2018. Ourada also testified that he was in the bar another time, but he did not remember the exact date, and he denied that he had a conversation with Bresson’s boyfriend. The district court asked Ourada if he was in the bar on July 3, which would have been a Tuesday, and Ourada answered, “Could have very well been.” Ourada said that he had no problem keeping his distance from Bresson, “but there is a lot of stuff close by in Vesta.” At the end of his testimony, Ourada asked the district court, “Would it just be better to hire an attorney to solve this matter?” The district court answered, “Uh, certainly have the right to do that, it’s a little bit late now after the hearing, that’s what the hearing is for today.”

The district court took the matter under advisement and later issued an HRO that prohibits Ourada from harassing Bresson, from having any direct or indirect contact with Bresson, and from being within 500 feet of her home address and job site in South Dakota and within 250 feet of her property in Vesta. The HRO is to remain in effect until July 2, 2043.

D E C I S I O N

This court reviews a district court's grant of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008); *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). A district court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record. *Dobrin v. Dobrin*, 569 N.W.2d 199, 202 (Minn. 1997). "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. "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). Whether the facts as found by the district court satisfy the definition of harassment is a question of law reviewed de novo. See *Peterson*, 755 N.W.2d at 761 (explaining that the authority to grant an HRO is statutory and that appellate courts review questions of statutory interpretation de novo). "[T]his court will reverse the issuance of a restraining order if it is not supported by sufficient evidence." *Kush*, 683 N.W.2d at 844.

“A district court’s authority to issue an HRO is granted by statute.” *Peterson*, 755 N.W.2d at 761; *see* Minn. Stat. § 609.748, subd. 5 (2018). Under the HRO statute, a person who is a victim of harassment may file a petition for relief that must allege facts sufficient to show that the respondent engaged in harassment of the alleged victim. Minn. Stat. § 609.748, subs. 2, 3 (2018). The district court may issue an HRO “order[ing] the respondent to cease or avoid the harassment of another person” or “to have no contact with that person” if:

- (1) the petitioner has filed a petition under subdivision 3;
- (2) a peace officer has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of the right to request a hearing . . . ; and
- (3) the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.

Id., subd. 5(a)-(b).

If the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent or the respondent has violated a prior or existing restraining order on two or more occasions, relief granted by the restraining order may be for a period of up to 50 years.

Id., subd. 5(b).

Cross-examination and hearsay

Citing *Anderson v. Lake*, 536 N.W.2d 909 (Minn. App. 1995), Ourada argues that the district court erred by denying him his right to cross-examine Bresson during the hearing. Section 609.748 provides for a hearing before the district court issues an HRO. In *Anderson*, this court held that the hearing required under Minn. Stat. § 609.748, subd. 5, “includes the right to examine witnesses” and stated that cross-examination of a witness

“should not be restricted” so long as it “elicit[s] facts to show the truth.” *Id.* at 911. But, in *Anderson*, the appellant’s attorney argued in the district court that the court’s findings were not conclusive because the court did not permit the appellant to rebut the respondents’ arguments through direct or cross-examination. *Id.* at 910-11. Unlike *Anderson*, Ourada did not object to the district court’s failure to allow him to cross-examine Bresson.

Ourada also argues that the district court improperly admitted hearsay evidence when it allowed Bresson to testify about her boyfriend’s encounter with Ourada at the Vesta bar. But, once again, Ourada did not object when Bresson testified about the encounter.

“It is well settled that a party may not raise for the first time on appeal a matter not presented to the court below.” *In re Welfare of K.T.*, 327 N.W.2d 13, 16-17 (Minn. 1982). Because Ourada did not raise his cross-examination and hearsay objections in the district court, they are not properly before this court, and we decline to address them. We recognize the challenges that a pro se party faces when appearing in the district court, but those challenges do not excuse a failure to raise an issue. *See Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (“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.”).

Finding based only on an allegation in the petition

The district court found that Ourada frightened Bresson with threatening behavior by violating an HRO “in July 2015 when [Ourada] attended a wedding near [Bresson’s] residence and law enforcement was called.” Ourada argues that this incident was not

mentioned during the hearing and this finding is improperly based only on allegations in Bresson's petition. Ourada contends that he did not have an opportunity to rebut the allegation because it never came up in court.

Bresson's third affidavit and petition alleged, "In June or July of 2015, [Ourada] attended a wedding located near my residence and law enforcement was called." During the hearing, the district court asked Bresson if Ourada had violated either of the two prior HROs. Bresson answered, "The cops have been called twice," and she then described two incidents. The first was when she encountered Ourada at the Vesta bar, and, with respect to the second incident, she said, "I think it was June or July of 2016 I also called law enforcement, because [Ourada] was within 500 feet of my property and um, law enforcement was not able to contact him."

Although Bresson testified that the second incident was in 2016, the record as a whole suggests that she was referring to the wedding incident in 2015 because she also testified that she had called law enforcement twice, and the only evidence of her contacting law enforcement shows that she called once after seeing Ourada on July 14, 2018, at the Vesta bar and once when he was near her residence. The allegation in Bresson's petition that Ourada attended a wedding near her residence in June or July of 2015 and law enforcement was called, together with her testimony that she called law enforcement in June or July of 2016 because Ourada was within 500 feet of her property, support an inference that the second incident that Bresson referred to in her testimony was actually the wedding incident in June or July of 2015, and she simply misspoke about the year.

Ourada had an opportunity during the hearing to rebut Bresson's testimony about the second incident.

Furthermore, the record includes Bresson's affidavit and petition, and the allegations in the affidavit and petition were made under oath. Ten days before the hearing, a deputy sheriff served Ourada with the affidavit and petition, and Ourada had an opportunity to respond to Bresson's allegations during the hearing. The district court's finding that Ourada violated the first HRO in 2015 by attending a wedding near Bresson's residence is not clearly erroneous.

Whether conduct was harassment

Ourada argues that, even if the district court was correct when it found that, in 2015, he attended a wedding near Bresson's residence and, on July 3, 2018, he went to the bar in Vesta across the street from Bresson's residence, these two incidents did not violate any HRO, and, even if they did, they were not incidents of harassment. Ourada contends that there is a difference between a violation of an HRO and harassment.

We agree that the HRO statute does not state that any violation of an HRO is harassment. The statute defines harassment to include "a single incident of physical or sexual assault" or "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). It is conceivable that there could be a minor HRO violation that could not have any effect on another, and, in that case, the violation would not constitute harassment.

But the district court did not simply conclude that, because Ourada violated the earlier HROs, he engaged in harassment. The district court concluded that Ourada engaged in harassment by frightening Bresson with threatening behavior. The district court described the threatening behavior as attending a wedding near Bresson's residence and going to the bar across the street from her residence, and, although the district court found that these acts violated the earlier HROs, the district court also found that the acts had, or were intended to have, a substantial adverse effect on Bresson's safety, security, or privacy. Together, these findings indicate that the threatening behavior was not harassment because it violated the HROs, it was harassment because it affected Bresson's security by frightening her.³ The district court's findings of fact are not clearly erroneous, and the facts as found by the district court satisfy the definition of harassment.

Ourada also argues that even if the two incidents were violations of the earlier HROs, they "were not intrusive acts because they did not involve any contact at all." But, although Ourada is correct that the district court did not find that there was any contact between him and Bresson during either of the incidents, his argument fails to recognize that the statutory definition of harassment is not limited to intrusive acts and does not require contact between him and Bresson. Getting close to Bresson's residence was an

³ The check-the-box form that the district court used for its order caused confusion because it divided the harassment finding into two separate findings, one that described the acts and another that described the effect of the acts. Under the statute, an act and its effect must be considered together to find that there is harassment. See Minn. Stat. § 609.748, subd. 1(a)(1). The printed form incorrectly refers to an act, by itself, as harassment. The district court's complete findings, however, address the acts and the effects of the acts.

unwanted act, and even if Bresson was not present when the acts occurred, the district court could find that the acts had a substantial adverse effect on Bresson's security by frightening her when she learned that Ourada had been close by.

Whether incidents violated an HRO

Ourada argues that neither of the incidents that the district court cited as a basis for the HRO was a violation of the earlier HROs. But, as we have explained above, even if Ourada did not violate an HRO, the district court could still conclude that his conduct constituted harassment.

Ex parte order based on 2014 assault

Ourada argues that, although there is no express prohibition against using the 2014 assault as the basis for the 2018 ex parte temporary order, the two-year limit on the duration of an HRO is null if the original assault can be used as the basis for multiple HROs. Ourada contends that the only way to give effect to the two-year limitation is to construe the statute to require a finding of an additional instance of harassment as the basis for a future HRO.

But, when a statute is not ambiguous, we must give effect to its plain language. *State v. Nelson*, 842 N.W.2d 433, 436 (Minn. 2014); see *Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) ("We cannot add words or meaning to a statute that were intentionally or inadvertently omitted."); *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 759 (Minn. 2010) ("[I]f the language of a statute is clear and free from ambiguity, our rule is to enforce the language of the statute, and not explore the spirit or purpose of the law."). As Ourada recognizes, the statute does not require an additional instance of harassment as the basis for an additional HRO. Under the unambiguous language of the

statute, a victim of a sexual assault may seek a two-year HRO against the assailant, and, when two years have passed, the victim may seek a second two-year HRO based on the same sexual assault. *See* Minn. Stat. § 609.748, subd. 5(b). When the second two-year period has passed, the victim may seek a third HRO based on the same sexual assault. And, if the district court has already granted the first two HROs against the assailant, the third HRO may be for a period of up to 50 years. *See id.* (stating that “[i]f the court finds that the petitioner has had two or more previous restraining orders in effect against the same respondent . . . relief granted by the restraining order may be for a period of up to 50 years”). The 2014 assault was a permissible basis for the 2018 temporary ex parte order.

Affirmed.