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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0094**

Jenna Marie Bjerke,
Appellant,

vs.

Dan Naweto Flomo,
Respondent.

**Filed October 7, 2019
Reversed and remanded
Slieter, Judge**

Hennepin County District Court
File No. 27-CV-18-17981

Mark R. Bradford, Patrick J. Sauter, Bassford Remele, PA, Minneapolis, Minnesota (for appellant)

Dan Naweto Flamo, Maple Grove, Minnesota (*pro se* respondent)

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Slieter, Judge.

U N P U B L I S H E D O P I N I O N

SLIETER, Judge

On appeal from the district court's denial of appellant's petition for a harassment restraining order (HRO), appellant Jenna Marie Bjerke argues that the district court erred in treating a series of acts by respondent Dan Naweto Flomo as a single incident. Because respondent's conduct included multiple incidents of harassing behavior over a period of

slightly more than 12 hours, the district court erred in considering respondent's conduct as a single incident. Therefore, we reverse and remand.

FACTS

Appellant and respondent were married for six years; they divorced on October 21, 2018. The parties have one child together.

On October 25, 2018, respondent learned, through third parties, that appellant may have alleged that respondent assaulted her in the past. This allegation upset respondent, and when appellant arrived at respondent's apartment to pick up their son that evening, respondent entered her car demanding that she tell him when he assaulted her.¹ Appellant asked respondent to get out of the car, but respondent refused. Instead, he yelled from the car "I'm not leaving until you answer my questions. I have nowhere to go. I'll stay in here." Respondent eventually exited the car, and appellant was able to drive away.

Over the course of the evening, respondent initiated over 50 phone calls to appellant. Respondent also sent multiple text messages throughout that evening and continued into the next morning, when he finally told appellant:

So we gonna do this all day cause i'm gonna blow up your phone all day today, tomorrow and the next day after[.] . . . This ain't never gonna stop[.] . . . You gonna get these messages everyday and every time I see you i'm gonna say sh-t to you until you tell me when I beat you.

¹ The record shows that respondent also sent appellant a series of text messages in the afternoon of October 25, 2018. We note, however, that the referee did not make factual findings related to these texts.

On October 30, 2018, appellant petitioned the district court for an HRO. The petition described the October 25 texting and calling incidents and included screenshots. She explained:

This is not the first time [respondent] has acted in this way and has harassed me to the point of I am scared of what he is going to do or where he might pop up at. . . . Daniel is so unpredictable, and it is just a matter of what will upset him next and when it will happen. He has consistently show[n] a pattern of this behavior and enough is enough.

The district court granted an *ex parte* HRO. On November 5, 2018, respondent requested a hearing. On December 17, 2018, a referee held an evidentiary hearing, during which the parties were the only witnesses to testify.

Appellant testified that the October 25 group of text messages was the final instance in what had been a years-long problem of respondent acting disrespectfully. Appellant testified that when she arrived at home after the incident at respondent's house, she immediately shut all her curtains and locked all her doors because "he made threats of coming to my house." She testified that she viewed these texts as a threat and interpreted them as appellant saying "I'm not stopping until I get what I want no matter what." Appellant testified that as a result of all of this, she was concerned for her safety.

Respondent testified that the allegation that he assaulted appellant upset him because he volunteers at two different shelters—one for victims of domestic abuse—and if a rumor that he committed such an act ever reached those places, he would not be able to volunteer there anymore.

The district court approved the referee’s findings and recommendation, dismissing the petition. Referencing the October 25 incident of respondent refusing to get out appellant’s car and respondent’s subsequent phone calls and text messages, the district court concluded as a matter of law that “[t]hese facts have proven that [r]espondent engaged in an incident of harassment.” However, it went on to explain that the relevant portion of the HRO statute requires “repeated incidents” of harassment to justify the grant of an HRO, and that appellant therefore failed to meet her burden of proving that respondent engaged in harassment within the meaning of the statute. The district court terminated the *ex parte* HRO that was in effect. This appeal follows.

ANALYSIS

Appellant argues that the district court erred in concluding that respondent’s conduct did not constitute “repeated incidents” sufficient to issue an HRO.² For the reasons explained below, we agree with appellant.

A district court’s authority to issue an HRO is granted by statute. Minn. Stat. § 609.748, subd. 5 (2018). “Statutory interpretation is a question of law, which we review *de novo*.” *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). “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 v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29,

² Respondent filed no brief in this matter, and the matter is therefore proceeding according to Minn. R. Civ. App. P. 142.03, which provides that if a respondent fails to file a brief, the appeal shall be decided on the merits.

2004); *see also Roer v. Dunham*, 682 N.W.2d 179, 182 (Minn. App. 2004). Ultimately, the issuance of an HRO is reviewed for an abuse of discretion. *Kush*, 683 N.W.2d at 843; *Witchell v. Witchell*, 606 N.W.2d 730, 731-32 (Minn. App. 2000).

Minnesota law provides that the district court “may issue an [HRO]” if “the court finds . . . that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3). The relevant part of the definition of harassment includes “repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect” on the victim. *Id.*, subd. 1(a)(1).

No definition for “repeated incidents” is found in the statute. “In the absence of a statutory definition, we generally turn to the plain, ordinary meaning of a statutory phrase.” *State v. Leathers*, 799 N.W.2d 606, 609 (Minn. 2011). The dictionary defines “repeated” as “[s]aid, done, or occurring again and again.” *The American Heritage Dictionary of the English Language* 1530 (3d ed. 1992). “Incident” is defined as “[a] definite and separate occurrence; an event.” *Id.* at 912.

Looking solely at these definitions, respondent’s behavior as found by the district court is “repeated.” First, when appellant arrived at respondent’s apartment in the evening to pick up their son, respondent confronted her, entered her car, and refused to get out. Later that evening and into the early morning of the next day, respondent continually called and texted appellant. Respondent’s actions directed at appellant occurred “again and again.” *Id.* at 1530.

A review of our caselaw also supports our analysis. We have found of significance two cases: one unpublished and one published and both of which involved an analysis of

“repeated incidents.” In *Peterson v. Meyer*, No. A18-1185, 2019 WL 2168770, at *1 (Minn. App. May 20, 2019), *review denied* (Minn. Aug. 6, 2019), this court affirmed issuance of an HRO; in *Beach v. Jeschke*, 649 N.W.2d 502, 502 (Minn. App. 2002), this court reversed issuance of an HRO. Though neither case identified as a basis for its decision a specific definition for “repeated incidents,” we find the contrasting facts presented in each case helpful to our analysis in this matter to conclude that repeated incidents of harassment occurred.

In *Peterson*, this court recently affirmed issuance of an HRO in which the harassing behavior consisted of messages sent on OurFamilyWizard, “a messaging application which offers web based and mobile phone based solutions for divorced or separated parents to communicate.” 2019 WL 2168770, at *1. Meyer sent many messages to Peterson over the course of two days, and Meyer’s messages contained language similar to respondent’s in this case. *Id.* at *1-2. The district court found that these constituted “repeated incidents” of harassment, and this court affirmed, rejecting Meyer’s argument that the messages were part of a single incident. *Id.* at *2-4.

In *Beach*, this court reversed the issuance of an HRO based upon an incident which comprised a two-sentence comment. 649 N.W.2d at 502-03. We held that “the two-sentence statement, uttered on one occasion, does not meet the requirement of ‘repeated incidents’ necessary to constitute verbal harassment.” *Id.* at 503.

In sum, the definition of “repeated” and our caselaw show that respondent’s conduct met the definition of “repeated incidents.” Respondent entered appellant’s car and refused to leave. Respondent then repeatedly called and texted into the evening and the next

morning. Given that multiple incidents of harassing behavior occurred over the course of approximately 12 hours, respondent's behavior meets the definition of "repeated incidents" of harassment sufficient to issue an HRO.

D E C I S I O N

The district court erred by concluding that respondent's conduct, occurring over approximately 12 hours, did not qualify as "repeated incidents" of harassment required to issue the HRO. We therefore reverse and remand for issuance of an HRO consistent with the provisions of Minn. Stat. § 609.748, subd. 5(b)(3).

Reversed and remanded.