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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1580**

Katherine Corrine McClain,
Respondent,

vs.

Troy Dennis Midas,
Appellant.

**Filed April 13, 2020
Affirmed
Bryan, Judge**

Brown County District Court
File No. 08-CV-19-574

Thomas L. Borgen, Nierengarten & Hippert, Ltd., New Ulm, Minnesota (for respondent)

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Considered and decided by Bratvold, Presiding Judge; Reyes, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Appellant challenges a harassment restraining order (HRO) prohibiting him from contacting or harassing respondent. Because the district court did not abuse its discretion by granting the HRO and because the district court did not clearly err in its findings of fact, we affirm.

FACTS

On June 28, 2019, respondent Katherine Corrine McClain petitioned the district court for an HRO against appellant Troy Dennis Midas. The district court issued an ex parte order granting the petition. Midas requested a hearing and the district court held an evidentiary hearing at which three witnesses testified: McClain, Midas, and McClain's friend. At the conclusion of the hearing, the district court granted the HRO. Midas appeals the HRO, arguing that the evidence does not support the district court's decision.

The testimony of McClain and her friend, Crystal, included the following information. McClain and Midas worked together until approximately two years before the evidentiary hearing. They were in a romantic relationship with each other until February 2019. In February 2019, McClain was out of town for work and Midas became upset when she did not return his calls right away. Midas accused McClain of lying about traveling for work, and began calling and texting more frequently. His conduct made her uncomfortable. McClain told Midas that she needed space and that he should not call or text her anymore. Midas initially stopped contacting her, but within thirty minutes, he was texting and calling again. He kept texting her after day. McClain stopped responding to Midas and moved to a new residence. Midas then began contacting Crystal, McClain's friend, trying to locate McClain and get in touch with her. Crystal testified that on June 22, 2019, Midas showed up at her home, unannounced, asking why McClain had stopped talking to him. Crystal testified that Midas seemed agitated. Crystal told Midas that McClain just wanted him to leave her alone. Midas told Crystal that he had some things he needed to return to McClain and asked Crystal to tell him McClain's new residential

address. When Crystal refused to do so, Midas declared that “we could do this the easy or hard way,” and that he “will find [McClain].” When Crystal testified about this statement, she noted again that Midas was very agitated. Crystal explained that Midas repeatedly told her that he needed to speak to McClain “face to face.” He told Crystal that if Crystal did not help him find McClain, “he will find [McClain] one day, that it’s not that hard.” Crystal testified that “it was very scary the way he worded it,” and that she “was concerned for both of us at that point.” When she told McClain about this interaction, Crystal observed that McClain was “very scared.” McClain testified that she felt what Midas did and said to Crystal was “very threatening.” She explained that Midas made her worried, was “unpredictable,” and concluded her testimony by stating that “I don’t know where this stops.”

Midas also testified at the evidentiary hearing. He admitted to contacting McClain, but disputed McClain’s testimony regarding the frequency of the texts and phone calls. At one point, he testified that he called her four times in March and April “to see if she was all right and getting the right help or whatever.” He also claimed that McClain called him once in March. Midas introduced a list of incoming and outgoing calls from his phone number from February to July. This list did not include any information regarding the existence or content of any text messages. The list showed one incoming call from McClain’s phone number in April. Midas testified that at some point in May, he believed that McClain agreed that they could still be friends and communicate.

Midas also addressed the testimony from McClain and Crystal regarding his confrontation of Crystal on June 22, 2019. Midas agreed that he had been in Crystal’s

neighborhood, “coming through town,” and he stopped by her house. Midas testified that he had a book and a card that he wanted to give to McClain. Midas claimed that he did not realize he was scaring Crystal. He testified that when he stated to Crystal that “we can do it the easy or hard way,” he meant it would have been easy for her to give him McClain’s address. He also claimed that when he said “the hard way,” he meant he would have to look it up on the internet: “If it was easy, if I could have got her address that day; the hard way I’d have to go search it or find it or look it up on the internet or whatever, and that’s all I was getting at with that comment.”

Midas was served with the ex parte HRO on July 2, 2019. The ex parte restraining order stated that “[Midas] shall have no direct or indirect contact with . . . [McClain] . . . including any visits to or phone calls to the protected person(s).” At the evidentiary hearing, the district court also heard testimony about a message that Midas left on Crystal’s voicemail on July 12, 2019. Crystal played the voicemail in court, and it was transcribed into the record. In the voicemail, Midas says, “Hey, Crystal, you really need to call Troy Midas. There’s been some problems that came up, and, um, you really need to call him” Midas then began referring to himself in the first person and stated that “this is the only phone call you’ll get from me . . . and it’s not a harassing phone call.” He stated that there was a “serious issue” that had come up and they needed to talk about it. If not, he continued, then, “the lawyers will talk about it and get it solved which is going to be a terribly costly thing for, for Kath - - you know, for everybody involved.” The voicemail also stated that it would be best if Crystal would “take [Midas] off the block,” and “[i]t would be the best case scenario, otherwise the other end result is going to suck either way.”

Midas admitted to leaving the voicemail on Crystal's phone and that he called it from someone else's phone number on July 12, 2019, after being served with the ex parte HRO. He also testified that he texted McClain on July 1, 2019, but that was before service of the HRO, and he just wanted to meet her for coffee.

The district court issued an HRO, concluding that "[t]here are reasonable grounds to believe that [Midas] has engaged in harassment of [McClain]." To support this conclusion, the district court made the factual finding that Midas committed the following two acts: (1) Midas "made harassing phone calls to [McClain]" when he "continued to send text messages after being asked to stop;" and (2) Midas "frightened [McClain] with threatening behavior" when he "contacted a friend of [McClain], said they 'can do this the easy way or the hard way.'" In its oral pronouncement, the district court explained that it did not believe that Midas credibly testified regarding the intended meaning of his statement to Crystal: "I heard the explanation, and it's a little difficult to accept, quite frankly. I think anybody who has watched TV or a movie knows when you say we can do this the easy way or the hard way, it's going to be taken as a threat."

D E C I S I O N

Midas argues that the district court abused its discretion when it granted the HRO because the evidence does not support the two findings of the district court in paragraph 2 of the HRO. First, Midas argues that the evidence does not support the district court's finding that he "made harassing phone calls to [McClain]" when he "continued to send text messages after being asked to stop." Second, Midas argues that the evidence does not support the district court's finding that "[Midas] frightened [McClain] with threatening

behavior” when he “contacted a friend of [McClain], said they ‘can do this the easy way or the hard way.’” We conclude that the district court did not clearly err in making its factual findings and that the district court did not abuse its discretion when it granted the HRO.

A district court’s authority to issue an HRO is granted by statute. Minn. Stat. § 609.748, subd. 5 (2018). The district court may issue an HRO if it finds that there are reasonable grounds to believe that a person has engaged in harassment. Minn. Stat. § 609.748, subd. 5(b)(3).¹ Harassment is defined as either 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.” *Id.*, subd. 1(a)(1) (2018).

We review the district court’s ultimate decision to grant or deny an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We review the factual findings made by the district court for clear error. *Id.* at 843-44 (citing Minn. R. Civ. P. 52.01); *see also In re Aljubailah ex rel. A.M.J. v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (“An appellate court will

¹ We have previously looked to this subdivision to distinguish the HRO statute from a criminal statute prohibiting harassment. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006) (upholding the constitutionality of the HRO statute because subdivision 5(3) limits application to objectively unreasonable conduct), *review denied* (Minn. Mar. 28, 2006). In *Dunham*, we emphasized that, unlike the unconstitutional criminal statute at issue in *State v. Machholz*, 574 N.W.2d 415, 421 (Minn. 1998), subdivision 5(3) involves consideration of the objective reasonableness of both a respondent’s conduct and a petitioner’s belief. *Id.* This language from *Dunham*, however, does not add to the statute or graft new elements onto the statutory prerequisites for an HRO, and we focus our analysis on the language of the statute itself.

neither reconcile conflicting evidence nor decide issues of witness credibility.”). “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). “[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.

First, Midas argues that the district court abused its discretion when it based the HRO on a finding that Midas committed an incident of harassment when he unreasonably continued to send text messages to McClain between March and May 2019. Midas believes this finding is contrary to the evidence because he testified that these text messages were not intrusive or unwanted. We must defer to the district court’s credibility determinations. *Id.* Further, on this record, we do not agree with Midas that the district court made a mistake. McClain told Midas to stop calling her and to stop texting her. McClain testified that she made this unequivocal statement in February and that Midas initially agreed, but within thirty minutes was texting and calling again. He kept texting her after that day. McClain stopped responding to Midas and moved to a new residence. The district court credited this testimony over Midas’s statements. In reviewing the testimony, we are not left with a firm conviction that the district court made a mistake when it found that Midas “continued to send text messages after being asked to stop.” We also conclude that this record supports a finding that Midas’s conduct was objectively unreasonable. The district court, therefore, did not abuse its discretion in relying on these findings when granting the HRO.

Second, Midas argues that the district court abused its discretion when it concluded that there were reasonable grounds to believe Midas frightened McClain with threatening behavior. Midas argues that his statement to Crystal cannot be interpreted as unreasonably threatening or having an adverse effect on McClain for the following two reasons: (1) because he did not directly communicate the statement to McClain; and (2) because he did not intend to threaten McClain when he made the statement. We first note that communicating a threat indirectly to a third party can satisfy the statutory meaning of “harassment.” *See, e.g., State v. Egge*, 611 N.W.2d 573, 575 (Minn. App. 2000), *review denied* (Minn. Aug. 15, 2000); *State v. Schweppe*, 237 N.W.2d 609, 614 (Minn. 1975).

In addition, we defer to the district court’s credibility determinations regarding Midas’s threatening intent. Midas testified that when he stated to Crystal that “we can do it the easy way,” he meant it would have been easy for her to give him McClain’s address. He also claimed that when he said “the hard way,” he meant he would have to look it up on the internet. Crystal’s testimony provides context for his statement. Midas approached Crystal unannounced, at her home, and was very agitated when he made the statement. Midas also made the statement after repeatedly telling Crystal that he needed to see McClain “face to face,” and after Crystal told Midas that McClain just wanted him to leave her alone. In making its oral pronouncement, the district court disbelieved Midas’s interpretation, explaining that any person would understand these statements as a threat: “I heard the explanation, and it’s a little difficult to accept, quite frankly. I think anybody who has watched TV or a movie knows when you say we can do this the easy way or the hard way, it’s going to be taken as a threat.” Our review of the evidence in the record does

not leave us with a firm conviction that the district court made a mistake when it found that Midas “frightened [McClain] with threatening behavior” by telling Crystal that “they ‘can do this the easy way or the hard way.’” We also conclude that this record supports a finding that Midas’s threatening conduct was objectively unreasonable and a finding that McClain’s fear was objectively reasonable.

The district court, therefore, did not abuse its discretion in granting the HRO based on Midas’s threatening conduct.²

Affirmed.

² Given our conclusions above, we need not address whether the HRO is also properly supported by Midas’s conduct after the petition was filed (contacting McClain on July 1, 2019, asking her to meet him and contacting Crystal on July 12, 2019, asking her to call him in order to avoid “a terribly costly thing”).