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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1670**

John Patrick Becker,
Respondent,

vs.

Pablo Murillo,
Appellant.

**Filed April 20, 2020
Affirmed
Bjorkman, Judge**

Goodhue County District Court
File No. 25-CV-19-1832

Amy E. Mace, Elizabeth J. Vieira, Rupp, Anderson, Squires & Waldspurger, P.A.,
Minneapolis, Minnesota (for respondent)

Nicholas D. Henry, Morris Law Group, P.A., Edina, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Reilly,
Judge.

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

BJORKMAN, Judge

Appellant challenges an harassment restraining order (HRO) issued in favor of
respondent city council member, arguing that his conduct does not constitute harassment
under the HRO statute. We affirm.

FACTS

Appellant Pablo Murillo works with developers, builders, and architects on commercial construction projects. In 2019, Murillo was working on a project to convert a hospital in Red Wing into affordable rental housing. The project is located in Ward 2, which respondent John Patrick Becker represents as a member of the Red Wing City Council. Murillo's work required him to "lobby softly and explain [the project] to City Council members" and gain their support. Murillo reached out to Becker by phone to set up a meeting. Becker said he was busy and would get back to him but failed to do so.

The city council was scheduled to consider the conditional-use permit (CUP) application for the project on July 22, 2019. On July 18, Murillo and a construction company representative entered Becker's Red Wing printing and framing store in hopes of discussing the project with Becker. A store employee told the men that Becker was at his Rochester store and that they might want to call ahead before driving down.

The men drove to Rochester and met with Becker for about 15 minutes. They discussed various aspects of the project. At one point Murillo stated that his wife had been severely beaten during a home invasion years earlier, and that he was from Colombia where "they have their own way of dealing with justice."¹ Becker thought it "most concern[ing]" that Murillo shared this information during their discussion about the project and strange that Murillo "could talk about something that had happened to his wife that was that horrific

¹ Murillo denied saying that he is from Colombia (because he is from Bolivia), and testified that he brought up the crime involving his wife to allay Becker's concerns about increased crime associated with the project.

and still have a calm demeanor about it.” And Becker was uncomfortable because of Murillo’s statement that he “knew all about me,” including that he had changed his career after the terrorist attack of September 11, 2001. Becker eventually asked the men to leave and said they were wasting their time because he did not support the project. The two men left.

Later that day, Becker told a former city council colleague about the encounter. The colleague advised Becker to report the incident to police. Becker decided not to do so because he concluded that Murillo was just “giving me the hard sell . . . to close this deal.”

During the July 22 meeting, the city council devoted a “very contentious” three hours to the CUP application. On a 5-2 vote, the council approved the CUP with significant restrictions, with Becker voting against it. Following the vote, the council recessed the meeting. Murillo grabbed Becker by the arm, leaned in very closely, and said “with malice,” “Do you pray? Because you better start. Your numbers are f-cked.” Becker “knew immediately that it was a threat, even though it wasn’t a direct threat,” because the “question” was really a suggestion that he needed to pray. He immediately reported the incident to the Red Wing Police Chief, who was at the meeting. The police chief confronted Murillo and returned to tell Becker there was no immediate threat. After the meeting, Becker reflected upon what Murillo had said on July 18 and felt that Murillo had delivered a violent message. Becker became “very concerned” about the safety of his family—some of whom worked in his stores.

Becker petitioned for and obtained a temporary HRO. Murillo requested a hearing, during which both parties and Becker's store employee testified. The district court found that Murillo had engaged in harassment and issued a one-year HRO prohibiting Murillo from being at Becker's home or within 25 feet of his stores. But the HRO permits Murillo to have contact with Becker at city council meetings and other municipal events. Murillo appeals.

DECISION

A district court may issue an HRO if the court finds "that there are reasonable grounds to believe that the [person] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a), (b)(3) (2018); see *Peterson v. Johnson*, 755 N.W.2d 758, 761-62 (Minn. App. 2008). "Harassment" is defined to include "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) (2018). Two or more instances of harassing conduct constitute "repeated incidents." *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), review denied (Minn. Sept. 29, 2004); see *The American Heritage Dictionary of the English Language* 1488 (5th ed. 2011) (defining "repeated" as "[t]o occur or happen again"). We review a district court's issuance of an HRO for an abuse of discretion. *Kush*, 683 N.W.2d at 843. And we will affirm the district court's findings of fact unless they are clearly erroneous, giving "due regard . . . to the district court's opportunity to judge the credibility of witnesses." *Id.* at 843-44.

The district court found that Murillo harassed Becker during the uninvited visit to his store and through his statements and physical act of grabbing Becker during the city council meeting. In its factual findings, the district court referenced Becker's petition, which laid out in greater detail why Becker wanted an HRO. The petition describes how Murillo's July 18 encounters with Becker and Becker's employee affected Becker's sense of security and how Murillo's hostile words and physical conduct at the city council meeting caused Becker to fear for his own safety and security and that of his family members and employees.

Murillo argues that the evidence is not sufficient to support an HRO. He contends that (1) the evidence does not establish repeated incidents of harassing conduct and (2) his statements do not constitute "true threats" within the meaning of the HRO statute, and did not reasonably cause Becker concern about his safety, security, or privacy. We address each argument in turn.

Murillo first contends that his interaction with Becker on July 18 is not an incident of harassment. He points to Becker's testimony that the encounter was "very cordial." But he omits Becker's qualification that this was true "for the most part." The record persuades us that the district court did not clearly err by finding that Murillo's statements suggesting that Colombians employ vigilante justice and that he knew "everything" about Becker—even if not intended as threats—had a substantial adverse effect on Becker's sense of safety and security. The HRO statute does not require that the unwelcome and threatening nature of words or actions be immediately apparent to the recipient. While Becker may not have fully understood the purpose of the encounter when Murillo left the store, he realized its

import later that day, when he confided his concerns to a colleague. And the impact of Murillo's statements more substantially affected him after the city council meeting.² The record supports the district court's findings that the two incidents had a substantial adverse impact on Becker's safety and security.

Murillo next asserts that his statements, by their nature, fall outside of the HRO statute. He does not contend that the HRO violates his constitutional right to free speech. But he cites *Dunham v. Roer* for the proposition that only "true threats" warrant an HRO and that his statements do not rise to that level. 708 N.W.2d 552 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006). In *Dunham*, this court rejected an overbreadth challenge because the words and conduct the HRO statute regulates are not constitutionally protected speech. *Id.* at 565 (stating that "fighting words" and "true threats" are not constitutionally protected speech). We concluded that the HRO statute does not infringe on protected speech because it requires "both objectively unreasonable conduct or intent on the part of the harasser and an objectively reasonable belief on the part of the person subject to harassing conduct." *Id.* at 567.

We discern no error in the district court's determination that these standards are satisfied here. First, taken collectively, Murillo's actions are objectively unreasonable conduct. After being told that Becker would get back to him about scheduling a meeting, Murillo showed up unannounced at Becker's stores and made veiled threats. A few days

² Murillo's July 22 conduct includes grabbing Becker's arm. This act alone could constitute harassment under the HRO statute. Minn. Stat. § 609.748, subd. 1(a)(1) (defining harassment to include a "single incident of physical . . . assault"). The district court did not identify this as a basis for issuing the HRO.

later, Murillo directly threatened Becker by grabbing his arm and stating, with malice, that he better start praying. These threatening words and acts were unwanted and intrusive. Second, Becker's response to the words and acts—fear for his safety and security—is objectively reasonable. The violent implications of Murillo's statements, particularly those he made while grabbing Becker's arm are clear: Murillo knew Becker strongly opposed the development project, he let Becker know that he was aware of many aspects of Becker's personal life, including his personal history and vulnerabilities, and where he worked, and Murillo strongly suggested he knew how to harm Becker, his family, and his other employees if he did not get what he wanted. Becker's expressed fear for the safety and security of himself and his family was not unreasonable. On this record, we discern no clear error in the district court's finding that "it was not unreasonable for Mr. Becker to feel threatened with the accumulation of [the] events." See Minn. R. Civ. P. 52.01 (appellate court will not set aside the district court's findings of fact unless clearly erroneous and will give due regard to its opportunity to judge witness credibility).

Finally, Murillo suggests that Becker could not have formed an objectively reasonable belief that he could be harmed because the police chief and the county attorney told him that Murillo's threats were innocuous. This assertion mischaracterizes the record. Becker testified that the police chief "reassured" him during the July 22 meeting that there was no "immediate threat," and that the city attorney "gave [him] a handful of options of what could take place." Moreover, the police chief simply told Becker that the county attorney did not believe that Murillo's conduct rose to the "level of a terroristic threat."

The county attorney did not discourage Becker from seeking an HRO or tell him that Murillo's threats were insufficient to support an HRO.

In sum, the record persuades us that the district court did not abuse its discretion by issuing the HRO.³

Affirmed.

³ We note that Becker is a public figure. As such, he must reasonably expect some amount of contact with city residents and others who wish to discuss city matters with him as he goes about his daily life. See *Metge v. Cent. Neighborhood Improvement Ass'n*, 649 N.W.2d 488, 495 (Minn. App. 2002) (defining an "all-purpose public figure" as a person who has prominent social status). Because Murillo does not challenge the scope of the HRO's no-contact prohibitions vis-a-vis Becker's position on the city council, we do not consider that issue. *Thiele v. Stich*, 425 N.W.2d 580, 585 (Minn. 1988) (stating that an appellate court will not consider issues not raised to the district court).