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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2072**

Jay Thomas Nygard,
Appellant,

vs.

Patrick Walsh,
Respondent.

**Filed July 20, 2020
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CV-19-10828

Jay T. Nygard, Orono, Minnesota (pro se appellant)

Patrick J. Walsh, Orono, Minnesota (pro se respondent)

Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and
Florey, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Jay T. Nygard challenges the district court's decision to deny his petition for a harassment restraining order (HRO) against respondent Patrick Walsh. Nygard argues that the district court (1) failed to appropriately take into account his post-traumatic stress disorder (PTSD) when determining whether there had been harassment, (2) disregarded his

evidence, (3) violated his constitutional right to due process, and (4) inappropriately cited unpublished decisions. We affirm.

FACTS

This dispute is between two neighbors in Orono. As the district court notes in its findings, the mutual distrust and animosity between the parties is apparent. Nygard, in particular, has made numerous appeals to this court, including in two previous lawsuits against Walsh. *See Nygard v. Walsh*, No. A15-0272, 2015 WL 6829840 (Minn. App. Nov. 9, 2015) (arising from a dispute over the boundary line between the Nygard and Walsh properties), *review denied* (Minn. Jan. 27, 2016); *Nygard v. Walsh*, No. A14-0011, 2014 WL 7236977 (Minn. App. Dec. 22, 2014) (affirming dismissal of Nygard's lawsuit against Walsh for defamation).

At issue in this action are three surveillance cameras that Walsh and his wife, Nancy Walsh,¹ installed on their property. The district court found that the Walshes installed the cameras on their home and directed them primarily toward different sections of their property.² The cameras' field of view does include some parts of Nygard's yard, and one of the cameras views the bottom of Nygard's house, but it observes no windows. The cameras record images, which are stored remotely. If no one saves the images, they are

¹ Nancy Walsh is referred to as Ms. Walsh throughout the opinion to distinguish her from respondent Walsh.

² The district court made its findings based on testimony from the Walshes, which it deemed credible.

deleted after 48 hours. The Walshes testified that they installed the cameras after multiple incidents involving Nygard.

After the Walshes installed the cameras, Nygard petitioned the district court for an HRO. Nygard sought a no-contact order and an order preventing Walsh from recording him on his property. After a hearing on the matter, the district court dismissed Nygard's petition.

This appeal follows.

D E C I S I O N

We review a district court's decision on whether to grant 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 factual findings for clear error, giving due regard to the district court's credibility determinations. *Id.* at 843-44.

A district court may issue a restraining order if it has "reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2018). 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 intended target." Minn. Stat. § 609.748, subd. 1(a)(1) (2018). "[S]ection 609.748 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." *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Nygard makes a number of arguments against the district court’s decision, which we address in turn.

Objective standard of harassment

Nygard makes two arguments regarding the “reasonable grounds” element of the HRO statute. *See* Minn. Stat. § 609.748, subd. 5(b)(3). He first asserts that his PTSD diagnosis is, in fact, an objective condition and that the district court erred by failing to consider it when assessing whether Walsh harassed him. He then argues, in the alternative, that the standard under the HRO statute is subjective, not objective.

In its order, the district court stated that “[Nygard’s] particular emotional vulnerability is not disputed, but this is a subjective feeling and not an objective action by [Walsh.]” Nygard contends that the district court inappropriately dismissed his PTSD as subjective. And he argues that the district court inappropriately prevented him from introducing testimony from his therapist to demonstrate his “objective diagnosis of PTSD . . . , what [his] objective symptoms are and how severe the [Walshes’] actions objectively affected [him].”

Nygard testified to his PTSD diagnosis and to the fact that he finds the cameras particularly distressing, and his testimony was not disputed. Testimony from his therapist therefore would have been redundant, and it was reasonable for the district court to exclude it. *See* Minn. R. Evid. 403 (“[E]vidence may be excluded if its probative value is substantially outweighed . . . by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”).

But more importantly, the district court did not misapply the objective standard under the harassment statute. The objective standard is “[a] legal standard that is based on conduct and perceptions external to a particular person.” *Black’s Law Dictionary* 1624 (10th ed. 2014). The subjective standard is “[a] legal standard that is peculiar to a particular person and based on the person’s individual views and experiences.” *Id.* Here, by describing Nygard’s sensitivity to cameras as a “subjective feeling,” the district court was noting that Nygard’s PTSD was something specific to Nygard and his perceptions; the district court was not stating that PTSD was not a legitimate medical condition. To issue an HRO, the district court had to assess the conduct and perceptions external to Nygard’s particular perceptions. Nygard’s PTSD, even though acknowledged by the district court, was not part of an objective assessment of the impact of the cameras and their placement.³

Nygard argues that the district court incorrectly considered only the placement of the security cameras, not the effect of the placement of the security cameras. But the district court described the issue in terms of the placement of the cameras because the placement provides an objective means of determining not only the reasonableness of the Walshes’ conduct in installing the cameras but also the reasonableness of their effect on Nygard. Which areas of the yards the cameras are recording, how long the cameras store the information, and whether the cameras can see any of the windows of Nygard’s house are all factual considerations external to the perceptions of a single person. The district court

³ Nygard makes a policy argument that the HRO statute should also protect individuals who suffer from PTSD, but he provides no legal authority for why PTSD should be considered under an objective standard.

applied an objective standard in considering the effect of the cameras on Nygard, rather than a subjective standard that considered his particular sensitivity to cameras.

Nygard alternatively contends that the objective standard applied by the district court is the wrong standard, arguing that the language of section 609.748 “is clearly subjective, especially in this instance.” He asserts that “[w]hat might be a substantial adverse effect for one person . . . might not be for another” and that “[t]here really is no way to specifically quantify that phrase.” But the law is clear that the district court may issue an HRO only if it has “reasonable grounds” to believe harassment has occurred and that whether “reasonable grounds” exist is an objective, not a subjective, analysis. Minn. Stat. § 609.748, subd. 5(b)(3); *see also Dunham*, 708 N.W.2d at 567 (“[T]he [HRO] statute . . . requires a court to find that there are reasonable, rather than merely subjective, grounds to believe that the accused engaged in harassment”). The district court correctly applied an objective standard to Nygard’s petition.

Factual findings

Next, we address Nygard’s challenges to the district court’s factual findings. He complains that the district court found credible and relied on the Walshes’ testimony about their camera system, even though the Walshes presented no physical evidence to support their testimony. A district court determines facts in part by taking testimony and assessing the credibility of the witnesses. *See Kush*, 683 N.W.2d at 843-44. Nygard cites no authority for his argument that there must be physical evidence supporting a witness’s assertion before a district court can find the witness credible. He also points to no evidence in the record that shows that the district court incorrectly relied on the Walshes’ description of

their camera system.⁴ Nygard, in fact, admitted at the hearing that he had “no idea” about how the camera system worked or whether it was recording. Nygard has failed to show that the district court clearly erred in its factual findings about the Walshes’ camera system.

Nygard also contends that the district court “failed to investigate [his] claims of public provocation.” He contends that Walsh repeatedly called him an offensive name but that the district court “glossed over” his concerns of verbal abuse. His argument is unavailing for several reasons.

First, Nygard, as the party seeking an HRO, had the burden of proof. *See C.O. v. Doe*, 757 N.W.2d 343, 352 (Minn. 2008) (stating that, when a statute does not specify the burden of proof, “[t]he general rule is that the burden of proof rests on the party seeking to benefit from a statutory provision”). The district court was not supposed to “investigate” his claims; he had to provide evidence to prove them.

Second, Nygard’s general allegations of name calling and provocation do not rise to the level of statutory harassment, even if he is particularly upset by such names. *See Kush*, 683 N.W.2d at 844 (“[I]nappropriate or argumentative statements alone cannot be considered harassment.”); *see also Dunham*, 708 N.W.2d at 567 (“[S]ection 609.748 requires . . . an objectively reasonable belief on the part of the person subject to harassing conduct.”).

⁴ Nygard claims that the district court prevented him from entering police reports and court documents into evidence. But Nygard did not explain to the district court, and does not explain on appeal, how those documents are relevant to the Walshes’ camera system. Instead, it appears that he wanted to enter them to show that “[Walsh] lied” previously about another incident.

Third, the district court accurately described the testimony when it said that “[t]he claims by [Nygard] that [Walsh] engaged in verbal abuse were not specific and not developed extensively during the hearing.” Nygard described an incident in which Walsh repeatedly called him a name that he finds particularly offensive, but he provided no factual details about the incident besides the name calling. The district court’s finding on the matter was not clearly erroneous.

Due process

Nygard makes broad allegations that his constitutional rights, particularly his right to due process of law, were violated. He claims that the violations occurred in two forms: (1) when the district court interrupted his questioning of Ms. Walsh and (2) when the district court considered certain aspects of the history between Nygard and the Walshes.

The disputed exchange between Nygard and Ms. Walsh involved him questioning her about why the Walshes had installed the cameras on their property. After Ms. Walsh explained why one of the cameras was pointed at their mailbox, Nygard began using compound, leading questions in an attempt to extract some kind of admission from Ms. Walsh. Ms. Walsh kept denying details inserted by Nygard into his questions, until the district court, recognizing that the questioning was going nowhere, told Nygard to move onto something else. The district court gave Nygard ample opportunity to cross-examine Ms. Walsh and did not violate Nygard’s due-process rights by stopping unproductive questioning.

As to his second claim of a due-process violation, Nygard argues that the district court violated his rights when, in its order, it used the “regardless of the relationship

between the actor and the intended target” language of section 609.748 “to ignore the history of the actor, but then include the history of the intended target.” Nygard claims that the district court ignored the statute when it noted that “the cameras were installed in response to a long history of strife between the parties.” Nygard then states: “Clarifying [section] 609.748 to clearly spell out that the history of the intended target is to be ignored while the history of the actor can be reviewed, or to be clear that the history of both is to be ignored in their entirety is a must.”

Nygard provides no legal authority connecting the “regardless of the relationship” language of section 609.748 to a prohibition on a court’s consideration of the history between two parties when considering an HRO petition.⁵ Instead, the plain language of the statute indicates that courts, when assessing whether conduct is harassment, are not to consider the relationship status between the parties—for example, whether there is a familial relationship between the parties. *See* Minn. Stat. § 609.748, subd. 1(a)(1). Here, the cameras were the subject of the dispute, so it was not inappropriate for the district court to describe, especially in the neutral manner that it did, the impetus for the installation of the cameras. The district court did not violate Nygard’s due-process rights by briefly mentioning the history of the relationship between Nygard and the Walshes in its order.

⁵ It is not really clear how Nygard’s interpretation would even work in practice. In order to grant an HRO, the district court needs to consider past conduct—the “history”—of the parties towards one another.

Unpublished case law

Lastly, Nygard takes issue with the district court citing unpublished opinions from this court in its order. Nygard contends that the law requires parties citing unpublished opinions to provide a copy of the unpublished opinion to all other counsel under Minn. Stat. § 480A.08, subd. 3, (2018). But this rule applies to parties in a case, not the court. A district court may cite unpublished opinions for their persuasive value, even if those opinions are not binding as precedent on the district court. *Donnelly Bros. Constr. Co. v. State Auto Prop. & Cas. Ins. Co.*, 759 N.W.2d 651, 659 (Minn. App. 2009) (concluding that the district court did not inappropriately cite an unpublished case because it was used for its persuasive, not precedential, value). The district court did not err.

Affirmed.