

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0539**

Lindsey Middlecamp,
Respondent,

vs.

Brock William Fredin,
Appellant.

**Filed February 8, 2021
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-HR-CV-19-621

K. Jon Breyer, Kutak Rock LLP, Minneapolis, Minnesota (for respondent)

Brock Fredin, St. Croix County, Wisconsin (*pro se* appellant)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

The district court issued a harassment restraining order that prohibits Brock William Fredin from harassing or contacting Lindsey Middlecamp, from anonymously posting online content about her, and from commencing a lawsuit against her on a self-represented basis without prior approval of the district court. We conclude that the district court did not err and, thus, affirm.

FACTS

In 2017, Lindsey Middlecamp, a licensed attorney, operated an anonymous Twitter account. In January of that year, she posted a tweet about Fredin. After learning of the tweet, Fredin attempted to find out the identity of the person who had posted it, and he eventually did so. In April 2017, Fredin posted multiple tweets about Middlecamp. His tweets accused her of posting tweets that violated state law. His tweets also identified the law school from which she graduated, her then-current employer, and a bar association of which she apparently was a member. Fredin also created a website with a URL that consisted of Middlecamp's name. The website made derogatory statements about Middlecamp, such as a statement that she had "engaged in multiple acts of professional misconduct." The website encouraged readers to file professional and criminal complaints against Middlecamp.

After discovering Fredin's online content, Middlecamp petitioned the district court for a harassment restraining order (HRO). In October 2017, the district court issued an HRO that prohibited Fredin from harassing Middlecamp, from having any direct or indirect contact with her, and from being present at or near her home or workplace. In addition, the HRO prohibited Fredin from harassing Middlecamp by making public statements, as follows:

Writings or other communications by [Fredin] which are made available for public hearing or viewing and which contain addresses, telephone numbers, photographs or any other form of information by which a reader may contact, identify or locate [Middlecamp] are acts of harassment and are prohibited by this order. Any communications made by [Fredin] under an identity or auspices other than his true name and which refer to

[Middlecamp] are acts of harassment and are prohibited regardless of the truth or falsity of any statement made about [Middlecamp].

In December 2017, Middlecamp filed an affidavit in which she stated that Fredin had violated the HRO. The district court issued a show-cause order and scheduled a hearing for January 4, 2018. While the parties were at the courthouse that day, Fredin attempted to talk to Middlecamp in a hallway. A deputy sheriff who witnessed the incident immediately arrested Fredin for violating the 2017 HRO. The state charged Fredin with the criminal offense of violating an HRO, in violation of Minn. Stat. § 609.748.6(b) (2016). A Ramsey County jury later found him guilty of that offense.

The district court conducted an evidentiary hearing on the show-cause order in February 2018. The district court later filed a 10-page order in which it found that Fredin had violated the 2017 HRO by creating five websites that made disparaging statements about Middlecamp and others, each of which included a hyperlink to the complaint in a federal civil action Fredin had filed against Middlecamp, which disclosed Middlecamp's home address, in violation of the provision prohibiting public statements that "contain addresses, telephone numbers, photographs or any other form of information by which a reader may contact, identify or locate [Middlecamp]." The district court ordered Fredin "to remove the content of the websites that is in violation of" the 2017 HRO. The district court also ordered that the 2017 HRO would remain in effect until September 2019.

In July 2019, Middlecamp petitioned the district court for another HRO. She requested an HRO of up to 50 years in duration on the ground that Fredin had violated the 2017 HRO on two or more occasions. The district court promptly granted the petition on

an *ex parte* basis and issued a temporary HRO, pending a hearing on the petition. In December 2019 and March 2020, the district court held a two-day evidentiary hearing at which Middlecamp appeared with counsel and Fredin appeared *pro se*. Middlecamp testified on her own behalf, and Fredin cross-examined her. Fredin elected not to testify when given the opportunity to present evidence. Middlecamp called Fredin as a rebuttal witness, but he refused to answer any questions.

In March 2020, the district court filed a four-page order granting Middlecamp's petition and an accompanying six-page memorandum. The district court found that Fredin violated the 2017 HRO six times: five times by creating five websites that disclosed Middlecamp's home address, as previously determined by the district court's February 2018 order, and once by attempting to contact Middlecamp at the courthouse on January 4, 2018, as previously determined by the jury in Fredin's criminal trial. The district court determined that a 50-year HRO is appropriate because Fredin had "violated a prior or existing restraining order on two or more occasions." Accordingly, the district court issued an HRO that forbids Fredin from harassing Middlecamp, from having any direct or indirect contact with her, and from being present at or near her home or workplace, until January 2070.

The district court also found that Fredin had harassed Middlecamp by filing an unsubstantiated complaint with the office of lawyers professional responsibility in October 2017; by filing a civil lawsuit against Middlecamp in federal district court in August 2017; by filing civil lawsuits referencing Middlecamp against two other persons in federal district court in February 2018; and by filing a petition for an extraordinary writ in this court in

July 2019. The district court determined that it is “appropriate to issue an order which limits [Fredin] from using the court system to harass [Middlecamp].” Accordingly, the district court imposed two additional restrictions on Fredin. The first states as follows:

Respondent shall not anonymously or pseudonymously register or publish websites, contribute to websites or generate social media posts, memes, images, or other online content, or induce others on his behalf, which relate to petitioner, nor shall he anonymously or pseudonymously contact third parties for any reason pertaining to petitioner. Respondent must use his own legal name to the extent he wishes to communicate with third parties or publish content related to petitioner so that this court may, if necessary, evaluate whether such content or communications constitute harassment.

In its memorandum, the district court stated, “It is appropriate to . . . limit respondent’s ability to harass petitioner through using anonymous or pseudonymous websites or other social media postings as he did in five of the violations mentioned above” The district court noted that “respondent’s right to comment about petitioner in public is protected as long as respondent is transparent.” The second additional restriction states as follows:

Respondent shall not, as a self-represented party, commence any new litigation asserting claims against petitioner without first obtaining leave of this court or judicial officer of the court in which that litigation is proposed to be filed. In the event respondent elects to obtain leave of a judicial officer in the court in which he seeks to file a claim, respondent must provide that judicial officer with a copy of this court’s order and accompanying memorandum.

In its memorandum, the district court stated, “It is also appropriate to issue an order which limits respondent from using the court system to harass petitioner.” The district court noted that “respondent’s right to sue petitioner in court remains intact, but is restricted: he must either have a licensed attorney represent him who is subject to the ethical duties to bring

meritorious claims and contentions or he must obtain leave of this court or a judicial officer of the court in which he seeks to file the claim.”

Fredin appeals.

DECISION

I. Issuance of 50-Year HRO

We begin by considering Fredin’s argument that the district court erred by granting Middlecamp’s petition and issuing a 50-year HRO.

A district court may grant an HRO if it finds that there are “reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2018). Harassment is defined by statute to mean “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). In general, a district court may issue an HRO that is valid for two years. *Id.*, subd. 5(b). But if “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,” the district court may issue an HRO that is valid for 50 years. *Id.*

In reviewing a district court’s issuance of an HRO, this court applies a clear-error standard of review to a district court’s findings of fact. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). We apply a *de novo* standard of review to a district court’s legal conclusions. *Peterson v. Johnson*, 755

N.W.2d 758, 761 (Minn. App. 2008). And we apply an abuse-of-discretion standard of review to a district court's ultimate decision to issue an HRO. *Kush*, 683 N.W.2d at 843.

In its memorandum, the district court stated that Fredin violated the 2017 HRO six times: by creating five websites that were in violation of the 2017 HRO, based on the district court's findings in its February 2018 order, and by making personal contact with Middlecamp at the courthouse on January 4, 2018, based on the jury's guilty verdict in the subsequent criminal prosecution. The district court's reasoning is supported by the evidence in the record. In addition to introducing evidence of the prior judicial determinations, Middlecamp testified that Fredin created websites that were directed at her, and she introduced exhibits to corroborate her testimony. She also testified that Fredin attempted to talk to her at the courthouse on January 4, 2018. In addition, she introduced evidence that Fredin had continued to harass her by filing complaints against her with the office of lawyers professional responsibility and in the state and federal courts, and the district court made findings consistent with that evidence. Fredin did not introduce any evidence that contradicts Middlecamp's evidence of harassment.

Fredin contends that Middlecamp's evidence is insufficient to justify the issuance of a 50-year HRO. He asserts that his conduct was not as serious as the conduct that has justified 50-year HROs in other cases. He cites *Rew v. Bergstrom*, 845 N.W.2d 764 (Minn. 2014), in which the supreme court rejected numerous constitutional challenges to the issuance of a 50-year HRO. *Id.* at 777, 780, 784. Because the appellant in *Rew* asserted only constitutional arguments, the supreme court did not establish any particular evidentiary standard for the issuance of a 50-year HRO. *Id.* at 777-84. Fredin has not cited

any precedential caselaw that has established a minimum evidentiary threshold for the issuance of a 50-year HRO, and we are unaware of any such caselaw. This court's nonprecedential caselaw indicates that Fredin's conduct in this case is similar to or more egregious than his conduct in other cases in which this court has affirmed the issuance of 50-year HROs. *See Schaefer v. Fredin*, No. A19-0657, 2020 WL 1921101, *1-7 (Minn. App. Apr. 20, 2020), *review denied* (Minn. July 23, 2020); *Miller v. Fredin*, Nos. A18-1154 & A18-1155, 2019 WL 3293766, *1-5 (Minn. App. July 22, 2019), *review denied* (Minn. Oct. 15, 2019).

Thus, the district court did not err by granting Middlecamp's petition and issuing a 50-year HRO.

II. Constitutionality

Fredin also argues that the district court erred by issuing an HRO that violates his constitutional rights to freedom of speech and access to the courts. His constitutional arguments are based on the First Amendment to the United States Constitution, which prohibits laws "abridging the freedom of speech" and protects "the right of the people . . . to petition the Government for a redress of grievances." U.S. Const. amend. I.

With respect to his right to free speech, Fredin contends that the HRO is both facially unconstitutional and unconstitutional as applied to him. The first of those two arguments is foreclosed by caselaw. In *Rew*, the supreme court held that a similar statute authorizing an order restricting speech toward a protected person for up to 50 years is not facially unconstitutional under the First Amendment. 845 N.W.2d at 776-80 (citing Minn. Stat. § 518B.01, subd. 6a(b) (2012) (current version at Minn. Stat. § 518B.01, subd. 6a(c)

(2018))). In addition, this court has held that section 609.748, subdivision 1(a)(1), is not facially unconstitutional because it focuses on unprotected speech and is not overbroad. *Dunham v. Roer*, 708 N.W.2d 552, 564-67 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Fredin's as-applied argument requires us to determine whether "the terms and conditions of the [HRO] burden no more speech than necessary to serve a significant state interest." *Rew*, 845 N.W.2d at 779-80 (citing *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765, 114 S. Ct. 2516, 2525 (1994)). It is significant that the HRO restricts Fredin's speech only to the extent that he seeks to publish anonymously or pseudonymously; the HRO does not restrict Fredin's speech in any way so long as he identifies himself as the speaker. The district court explained that this limited restriction would make it possible for the court to "evaluate whether such content or communications constitutes harassment." In one respect this restriction is narrower than the restriction in *Rew*, which prohibited the appellant from engaging in certain forms of speech even if he identified himself. *See id.* at 774. The *Rew* court nonetheless rejected the appellant's as-applied challenge on the ground that "the district court carefully crafted the specific terms and conditions of the extended OFP in light of the significant government interest at stake: the prevention of future domestic abuse against *Rew*." *Id.* at 781. The HRO in this case is similar: it seeks to prevent future harassment by Fredin against Middlecamp. In *Rew*, the supreme court noted that it "does not prevent Bergstrom from expressing his ideas and messages in a number of other forums and ways." *Id.* The same is true in this case. Thus, the HRO, as applied, does not violate Fredin's right to free speech.

With respect to his right to petition the government for redress of grievances, Fredin contends that the HRO “prevents [him] from seeking relief in the courts.” The First Amendment’s Petition Clause “protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.” *Johnson v. County of Hennepin*, 915 N.W.2d 889, 893 (Minn. 2018) (quotation omitted). But the right to petition the government is not absolute. *In re Disciplinary Action Against Graham*, 453 N.W.2d 313, 319 (Minn. 1990). For example, “speech contained within a petition is subject to the same standards for defamation and libel as speech outside a petition,” and there is “no sound basis for granting greater constitutional protection to statements made in a petition . . . than other First Amendment expressions.” *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 389, 131 S. Ct. 2488, 2495 (2011) (quoting *McDonald v. Smith*, 472 U.S. 479, 485, 105 S. Ct. 2787, 2791 (1985)). Accordingly, the Petition Clause does not protect persons whose petitions unlawfully harass other persons in ways that are not protected by the First Amendment’s Free Speech Clause. *See State v. Alphonse*, 197 P.3d 1211, 1215-17 (Wash. Ct. App. 2008). Furthermore, the Petition Clause does not preclude court orders that restrict but do not completely bar the filing of lawsuits by frivolous litigants. *See Wolfgram v. Wells Fargo Bank*, 61 Cal. Rptr. 2d 694, 699-705 (Cal. Ct. App. 1997).

In this case, the HRO prohibits Fredin from commencing a new lawsuit against Middlecamp only if he represents himself (rather than retaining an attorney to represent him) and only if he commences it without seeking and obtaining leave of court. This restriction does not impose an absolute bar to Fredin’s access to the courts. The restriction

simply requires him to employ a licensed attorney or to obtain approval from the district court to ensure that he does not use litigation as a means to engage in further harassment. These restrictions are justified by the record, which shows that Fredin has an extensive history of commencing *pro se* lawsuits against Middlecamp and others in both state and federal court. Specifically, the district court record reveals that Fredin has commenced at least five civil lawsuits against Middlecamp¹ and five additional lawsuits against other women in which he has made allegations about Middlecamp.² There is no indication in the record that Fredin ever has achieved any success in any of those legal actions. Because we have concluded that the restriction on future lawsuits does not violate Fredin's right to free speech, we also conclude that it does not violate his right to petition the government. *See Borough of Duryea*, 564 U.S. at 389, 131 S. Ct. at 2495.

Thus, the district court did not err by issuing an HRO that violates Fredin's First Amendment rights to freedom of speech and access to the courts.

III. Denial of Sanctions Motion

Fredin also argues that the district court erred by denying his motion for sanctions against Middlecamp.

¹*Fredin v. Middlecamp*, 62-CV-17-3994 (Ramsey Cnty. Dist. Ct.); *Fredin v. Middlecamp*, 17-CR-3058 (D. Minn.); *Fredin v. Clysdale, Middlecamp et al.*, 18-CV-510 (D. Minn.); *Fredin v. Diamond, Street & Middlecamp*, 19-CV-2864 (D. Minn.); *Fredin v. Miller, Middlecamp et al.*, 19-CV-3051 (D. Minn.).

²*See Fredin v. Miller*, 18-CV-466 (D. Minn.); *Fredin v. Halberg*, 18-CV-02514 (D. Minn.); *Fredin v. Olson*, 18-CV-02911 (D. Minn.); *Fredin v. City Pages*, 19-CV-00472 (D. Minn.); *Fredin v. Halberg*, 19-CV-03068 (D. Minn.).

In February 2020, between the first day and the second day of the evidentiary hearing, Fredin brought a motion seeking sanctions against Middlecamp based on rule 11 of the rules of civil procedure. The motion was based primarily on Middlecamp's filing of petitions for HROs in 2017 and 2019. The motion also was based on assertions (which are not clearly explained) that Middlecamp prompted police officers to execute a search warrant of his residence and that she prompted prosecutors to file criminal harassment charges against Fredin. The district court denied Fredin's motion from the bench during the second day of the evidentiary hearing. The district court reasoned that Middlecamp had not asserted frivolous claims in this case. The district court also reasoned that the other issues raised in Fredin's motion were collateral attacks on various prior decisions of the district court.

A district court may impose sanctions under rule 11 on a party who presents a "pleading, written motion, or other document . . . for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Minn. R. Civ. P. 11.02(a). This court applies an abuse-of-discretion standard of review to a district court's decision on a sanctions motion. *In re Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *review denied* (Minn. Nov. 22, 2006).

On appeal, Fredin reiterates his argument that Middlecamp should be sanctioned for her "vexatious litigation." But this court has affirmed the district court's grant of Middlecamp's July 2019 petition and its issuance of the March 2020 HRO in this case. *See supra* parts I & II. That Middlecamp has prevailed on the merits indicates that her petition

was not frivolous and was not brought for an improper purpose. *See* Minn. R. Civ. P. 11.02. To the extent that Fredin seeks sanctions for conduct occurring outside this legal proceeding, he cannot show a basis for sanctions under rule 11, which is limited in scope to the pleadings, motions, and other documents filed with the district court. *See id.*

Thus, the district court did not err by denying Fredin's motion for rule 11 sanctions against Middlecamp.

IV. 2017 HRO

Fredin raises two additional issues concerning the district court proceedings that led to the issuance of the 2017 HRO. It appears that neither issue was raised with the district court between Middlecamp's second petition in July 2019 and the district court's issuance of the second HRO in March 2020.

First, Fredin asserts that he was not served with the *ex parte* 2017 HRO. He does not elaborate by providing any additional facts. In any event, the caselaw generally provides that a person against whom an HRO has been issued must challenge the validity of the HRO, if at all, in the case in which the HRO is issued, not in a subsequent action in which the validity of the HRO is presumed. *See State v. Romine*, 757 N.W.2d 884, 890 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009); *State v. Harrington*, 504 N.W.2d 500, 503 (Minn. App. 1993), *review denied* (Minn. Sept. 30, 1993).

Second, Fredin asserts that a member of this court, before joining the court, was a witness in the evidentiary hearing that led to the 2017 HRO. In April 2017, Fredin sent an e-mail message to Middlecamp's supervisor to accuse Middlecamp of professional misconduct and otherwise cast Middlecamp in a negative light. During an evidentiary

hearing in July 2017, Middlecamp's attorney called the supervisor as a witness for the purpose of laying a foundation for an exhibit consisting of Fredin's e-mail message. The supervisor was appointed to this court more than two years later but is not a member of this three-judge panel and has not had any input into the resolution of the merits of this appeal. Fredin suggests in his brief that the judge improperly signed an order in this appeal. On May 11, 2020, the judge signed a case-processing order concerning an untimely transcript certificate. The certificate was filed two weeks later without any adverse consequences for Fredin. That one member of this court testified briefly in a prior, related proceeding does not preclude other members of the court from serving on this panel and resolving the merits of Fredin's appeal. *See* Minn. Code Jud. Conduct Rule 2.11(A). Fredin did not file a motion seeking the recusal of any member of this panel. *See* Minn. R. Civ. App. P. 141.02. Unless disqualification is required, each member of this panel has an obligation to serve on the panel and to resolve Fredin's appeal on the merits. *See* Minn. Code Jud. Conduct Rule 2.7.

Affirmed.

A handwritten signature in dark ink, appearing to read "Matthew E. Johnson". The signature is fluid and cursive, with the first name "Matthew" being more prominent than the last name "Johnson".