

*This opinion is nonprecedential except as provided by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
A20-0661**

Ronald Regino Altamirano,
Respondent,

vs.

Katherine Peterson,
Appellant.

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

Rice County District Court
File No. 66-CV-20-454

Ronald Regino Altamirano, Faribault, Minnesota (pro se respondent)

James R. Martin, Martin Law Office, Faribault, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Jesson, Judge; and
Slieter, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

Appellant Katherine Peterson, who was witnessed egging respondent Ronald Altamirano's car, challenges the sufficiency of the evidence underlying the harassment restraining order granted to Altamirano and against her. Peterson further asserts the district court erred by not holding a full hearing and issuing an incorrect oath. Because testimonial

evidence supports Altamirano's claims, the district court did conduct a full hearing, and the retroactive oath was not improper, we affirm.

FACTS

After four days of eggs and tomato sauce thrown at his car, respondent Ronald Regino Altamirano hid in a neighboring vehicle one early January morning to catch the culprit. He witnessed appellant Katherine Peterson and an unknown male throw eggs and tomato sauce on his car, but was too afraid to confront them in person. Instead, Altamirano called the police. In response, Peterson reported Altamirano for driving without a driver's license. Altamirano responded by filing a petition for a harassment restraining order (HRO).

At a harassment hearing, Peterson, Altamirano, and a witness for Altamirano testified. The hearing required the use of an interpreter. In addition to the egging and police call, Altamirano testified that Peterson left messages for him at his work place, including a message left on his car in an envelope labeled "bruho," which the interpreter said meant "sorcerer" in Spanish. While he never witnessed Peterson at his workplace, Altamirano's coworkers reported seeing her there multiple times. Altamirano testified that these actions by Peterson made him fearful.

After this testimony, the district court judge realized he forgot to swear in Altamirano. He issued a correcting oath that "everything [he] said is the truth, and everything [he's] about to say is the truth." The judge administered oaths to the two remaining witnesses before they testified.

Peterson denied egging any car.¹ She admitted to leaving a message on Altamirano's car at his place of business, but claimed the note was meant for her ex-boyfriend, who was nicknamed "Bruho." Altamirano's witness testified that Peterson came to her house and accused the witness of harboring a rapist, and named Altamirano and Peterson's ex-boyfriend as men who lived there. The witness explained that no men live in her house, and that she makes a living selling meals out of her home, including to Altamirano.

After the testimony of every witness, the district court asked Peterson if she had questions for the witnesses. The judge explained that Peterson had "an opportunity to ask questions right now" but also gave her the option to wait until she testified. If she had questions, the court stated "tell me what you think the question is and then I can phrase it the way I want to phrase it." Peterson declined to ask questions.² Following her testimony, the judge asked again if there was anything else she wanted to say or ask, but Peterson declined this offer as well.

The district court identified several bases for the HRO: (1) the honesty of Altamirano and the lack of credibility of Peterson; (2) Altamirano witnessing the fifth egging incident; (3) the repeated efforts to falsely declare Altamirano a rapist; and (4) Altamirano's expression of fear. Peterson appeals.³

¹ Peterson later stated in her letter brief to this court that she had egged Altamirano's car once.

² Only one of these opportunities to ask questions was before the retroactive oath.

³ Altamirano did not file a brief in this appeal and this court ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

DECISION

I. Sufficient facts support the issuance of the HRO.

First, Peterson argues that the district court abused its discretion in granting the HRO because there was insufficient evidence to find that Peterson harassed Altamirano.

A district court may grant an HRO if, among other things, it “finds at the hearing that there are 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.” *Id.*, subd. 1(a)(1) (2018). We review the issuance of an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004). We will not overturn the district court’s decision to grant a restraining order unless that decision is based on an “erroneous view of the law” or is unsupported by the facts in the record. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019).

With this statutory framework in mind, we turn to the HRO before us. Here, Altamirano reported five incidents of eggs and tomato sauce being thrown at his car, and witnessed Peterson committing the final one. Peterson argues this only accounts as one incident, as “[t]here is no evidence given suggesting that Peterson was the one who put eggs and tomato sauce on Altamirano’s car the first four times.” We are not persuaded. The likelihood that Peterson happened to be only the fifth perpetrator in a pattern of dumping eggs and tomato sauce on a car that she also admitted to leaving messages on is minimal. Based on this testimony, the district court could objectively infer that Peterson

was behind more than one of the five eggings.⁴ Because the repeated eggings and Peterson’s admission to leaving a note on Altamirano’s vehicle are sufficient repeated incidents of intrusive or unwanted behavior, and given Altamirano’s credibility, this testimony supports the issuance of the HRO.⁵

In sum, because there were sufficient facts in the record to support issuance of the HRO, the district court appropriately exercised its discretion in granting it.

II. The district court allowed for a full hearing and a retroactive oath did not deny Peterson due process.

Second, Peterson contends that she was denied her rights to a “full hearing,”⁶ which we interpret as Peterson asserting the lack of an adequate hearing under Minnesota Statutes section 609.748 (2018), which we address below, in addition to her claim that the district court’s failure to give Altamirano an oath before testifying was improper.

⁴ Additionally, the district court found testimony regarding Peterson falsely claiming Altamirano was a rapist to satisfy an additional justification to support the HRO. Because we conclude that Peterson’s other behavior is enough to support the issuance of an HRO, we do not need to address the false rapist allegations.

⁵ Although it was not a basis for the district court’s decision, Peterson being spotted multiple times at Altamirano’s workplace, and her own testimony confirming that she placed a message on his car at his workplace, would support an additional factor for upholding the issuance of an HRO. *See Katz v. Katz*, 408 N.W.2d 835, 839 (Minn. 1987) (stating that the district court will not be reversed if it reached the right result for the wrong reason).

⁶ Peterson did not specify where she got the “full hearing” language from. However, she cites to *Anderson v. Lake*, in which this court observed that the Minnesota Domestic Abuse Act and the statute governing the issuance of HROs are “sufficiently similar so that we may recognize caselaw construing the former as applicable to the latter.” 536 N.W.2d 909, 911 (Minn. App. 1995). The statute at issue in *Anderson* has not contained the “full hearing” language for years. *See* 1995 Minn. Laws ch 142, § 5, at 404; 2002 Minn. Laws ch. 304 § 10, at 442; *see also Oberg v. Bradley*, 868 N.W.2d 62, 65 (Minn. App. 2015) (explaining the history of the phrase “full hearing” in this statute). But, the distinction between “hearing” and “full hearing” does not change the results of this matter.

Right to a Hearing

First, we look at whether Peterson was denied the right to a hearing when the court issued the HRO. We review the issuance of an HRO for an abuse of discretion. *Kush*, 683 N.W.2d at 843.

The district court may issue an HRO if:

- (1) the petitioner has filed a petition under subdivision 3;
- (2) a peace officer has served respondent with a copy of the temporary restraining order obtained under subdivision 4, and with notice of *the right to request a hearing . . .*; and
- (3) the court finds *at the hearing* that there are reasonable grounds to believe that the respondent has engaged in harassment.

Minn. Stat. § 609.748, subd. 5(b). This court has explained that a hearing includes “the right to present and cross-examine witnesses, to produce documents, and to have the case decided on the merits.” *El Nashaar v. El Nashaar*, 529 N.W.2d 13, 14 (Minn. App. 1995); *see also Anderson*, 536 N.W.2d at 911.

Those requirements were met here. The district court held a hearing, heard testimony from multiple witnesses, accepted exhibits into evidence, and gave the opportunity to question other witnesses to both parties. Peterson was given several opportunities to raise questions and chose not to. This case is a far cry from *El Nashaar*, where a hearing was held but no evidence was accepted, 529 N.W.2d at 14, and *Anderson*, where no witness was ever given an oath and the parties were barred from cross-examination, 536 N.W.2d at 910-11.

Still, Peterson argues that the judge's statement that "if you have any questions tell me what you think the question is and then I can phrase it the way I want to phrase it" was improper and shows that her right to cross-examine witnesses was violated. While this language in a vacuum may raise questions, the hearing here involved speakers who were not fluent in English and required a translator. Our view of this particular record leads us to conclude that the judge was acting as an intermediary, not trying to quash Peterson's questioning.

Because a hearing was held and Peterson was given the opportunity to cross-examine witnesses, the district court did not abuse its discretion in issuing an HRO.

Procedural Due Process

Next we turn to Peterson's argument that a retroactive oath violated her due-process rights. "The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Brooks v. Comm'r of Pub. Safety*, 584 N.W.2d 15, 19 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Nov. 24, 1998). We review the question of whether a person's due-process rights have been violated de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

Procedural due process includes "reasonable notice, a timely opportunity for a hearing, the right to be represented by counsel, an opportunity to present evidence and argument, the right to an impartial decisionmaker, and the right to a reasonable decision based solely on the record." *Humenansky v. Minn. Bd. of Med. Exam'rs*, 525 N.W.2d 559, 565 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995).

Here, there is no reason to believe that a curative, retroactive oath was not sufficient as a matter of procedural due process. Not only does Peterson fail to point to caselaw to say that a curative oath is improper or ineffective, this approach generally comports with other ways that the court allows for swearing of statements. *See generally* Minn. R. Gen. Prac. 15 (requiring that a “signature is affixed immediately below a declaration” in an affidavit instead of before a declaration).

For these reasons, the district court’s actions do not amount to a deprivation of Peterson’s statutory right to a hearing, nor a violation of her procedural due-process rights.

Affirmed.