

*This opinion is nonprecedential except as provided by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
A20-1042**

Wayne Floyd O'Connor,
Respondent,

vs.

Byron Thomas O'Connor,
Appellant.

**Filed March 22, 2021
Reversed
Hooten, Judge**

Rice County District Court
File No. 66-CV-20-1054

Bryan Freeman, Peter C. Hennigan, Maslon LLP, Minneapolis, Minnesota (for respondent)

Terrance W. Moore, Heidi J. Bassett, Katherine A. Herman, Hellmuth & Johnson, Edina,
Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Hooten, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from the issuance of a harassment restraining order, appellant argues that the district court's decision to issue the order was not supported by substantial evidence. We reverse.

FACTS

Appellant Byron Thomas O'Connor and respondent Wayne Floyd O'Connor are brothers. Byron and Wayne grew up in the Faribault area in a farming family. Starting in the mid-1970s, the brothers operated an agricultural business together that primarily produced corn, soybeans, grain, and hogs. Wayne managed the corn and soybean operations, Byron managed the hog operation, and the brothers helped each other out as needed. The business operated as an informal general partnership, and there was never any formal written agreement governing the business relationship between the brothers. The brothers' general practice was to split partnership revenue, expenses, and debts on a 50/50 basis. The brothers also owned partnership land, buildings, and equipment on a 50/50 basis.

In late 2017 or early 2018, Byron approached Wayne about potentially splitting up the partnership. Wayne agreed that parting ways would be for the best. Throughout 2018, Byron and Wayne attempted to divide the partnership's assets via mediation. These attempts failed, and a trial was eventually held.

On March 3, 2020, the district court issued an order dividing the partnership's land and other assets.¹ The district court awarded a 25-acre parcel of land referred to by the parties as "Dad's Acres" to Wayne. On this parcel were the former partnership's hog farm,

¹ Because it was not yet possible to make a final accounting of the 2019 growing season at this point in time, a third-party neutral was appointed to ascertain the partnership's proceeds and expenses from the 2019 season. This third-party neutral issued an order dividing the proceeds and expenses of the 2019 growing season on May 11, 2020, and this order was adopted by the district court on June 10, 2020.

a building containing a farm shop and garage, and a feed granary. The parties agree that title to the parcel was not immediately transferred to Wayne because “the parties [were] awaiting the resolution of several disputed debt issues to conduct the title transfers.” The parties also do not dispute that the district court awarded at least some of the former partnership’s hogs to Byron. The district court did not order Byron to remove his hogs from “Dad’s Acres” until June 10, 2020, at which point he was given 45 days to do so. It appears that Byron needed to continue making trips to “Dad’s Acres” to care for his hogs until the hogs were removed pursuant to the June 10, 2020 order.

On May 11, 2020, a little over two months after the district court issued its order dividing the partnership’s assets, Wayne filed a petition for a harassment restraining order (HRO) requesting protection from Byron. This petition was based on allegations that, on May 7, 2020, Byron had forced his way into the farm shop on “Dad’s Acres” and pushed Wayne. The petition also alleged that Byron had made several uninvited visits to Wayne’s property in the time since the district court’s order dividing partnership assets, including after Wayne had asked him not to do so; that Byron had continuously sent Wayne text messages and emails; that Byron had threatened Wayne’s son; that Byron had caused thousands of dollars in property damage by breaking into the shop on “Dad’s Acres” and leaving containers of chemicals outside overnight in cold weather; and that Byron had stolen tools, cabinets, shop supplies, and fixtures from the shop. The petition stated that Wayne felt his “life ha[d] been completely changed” by the alleged harassment, that he was “afraid all time,” and that he believed the harassment would continue, and perhaps even worsen. The petition requested that the district court issue an order requiring Byron

to stop harassing Wayne, have no contact with Wayne, stay away from Wayne's residence, and stay away from "Dad's Acres."

The district court issued a temporary ex parte HRO. The temporary HRO ordered Byron not to harass Wayne, not to have direct or indirect contact with Wayne, not to come within two blocks of Wayne's residence, and not to come within two blocks of "Dad's Acres." The temporary HRO provided that it would remain in effect for two years unless changed by a later court order.

The next day, Byron requested an emergency hearing concerning the HRO. In correspondence to the district court, Byron's attorney claimed that the HRO prevented Byron from caring for his hogs at "Dad's Acres," leaving the hogs unfed because Wayne was refusing to care for them. The district court set the matter for a remote hearing to be held the following day. Further correspondence from and between the parties' attorneys led the district court to clarify that the hearing would be limited to the issue of caring for the animals and would not be a full evidentiary hearing. Following the hearing, the district court amended the HRO to give Byron access to the four hog barns on "Dad's Acres," the feed granary on "Dad's Acres," and the garage on "Dad's Acres" where veterinary and other supplies were stored.

Byron subsequently requested a full evidentiary hearing concerning the HRO. The district court held an evidentiary hearing and issued an HRO identical to the amended, temporary HRO. Byron appeals.

DECISION

Harassment restraining orders are governed by Minn. Stat. § 609.748 (2020). An HRO (1) “orders the respondent to cease or avoid the harassment of another person,” (2) “orders the respondent to have no contact with another person,” or does both. *Id.*, subd. 5(a). A person who alleges harassment may petition the court for an HRO. *Id.*, subd. 2. The district court may issue a temporary HRO on an ex parte basis if it “finds reasonable grounds to believe that the respondent has engaged in harassment.” *Id.*, subd. 4(a), (b). If the respondent requests a hearing, “[t]he temporary restraining order is in effect until a hearing is held on the issuance of a restraining order.” *Id.*, subd. 4(d). After holding such a hearing, the district court may issue an HRO if it finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” *Id.*, subd. 5.

Harassment, for purposes of section 609.748, includes both “a single incident of physical or sexual assault,” and “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). Concluding that this second, non-assaultive form of harassment has occurred “requires a court to find that there are reasonable, rather than merely subjective, grounds to believe that the accused engaged in harassment.” *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Here, the district court issued a temporary ex parte HRO against Byron. The district court subsequently amended the temporary HRO to permit Byron to access the garage, feed granary, and hog barns on “Dad’s Acres.” An evidentiary hearing concerning the HRO

was eventually held, on Byron's request. Following this hearing, the district court issued an HRO that ordered Byron not to harass Wayne, ordered him to have no contact with Wayne, and permitted him limited access to "Dad's Acres" in the same manner as the temporary HRO. In issuing this HRO, the district court did not find that Byron had assaulted Wayne. Instead, the district court found that Byron had harassed Wayne by (1) making uninvited visits to Wayne; (2) making harassing phone calls or sending harassing text messages to Wayne; (3) frightening Wayne with threatening behavior; and (4) damaging Wayne's property.

"Ultimately, the issuance of an HRO is reviewed for abuse of discretion." *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). In reviewing the district court's decision to issue an HRO, "findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses." *Kush v. Mathison*, 683 N.W.2d 841, 843–44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). Importantly, we will reverse the district court's decision to issue an HRO if that decision is not supported by sufficient evidence. *Id.* at 844.

Based upon this record, we conclude that the district court's decision to issue the HRO is not supported by sufficient evidence. As support for the HRO, Wayne testified that Byron had repeatedly made uninvited visits to the farm shop and other locations on "Dad's Acres." Byron admitted to making visits to "Dad's Acres," but he argues that his visits to "Dad's Acres" cannot be considered uninvited visits because legal title to the property had not yet been transferred to Wayne, but was still owned jointly by the brothers. Moreover, Byron had not yet been ordered to remove his hogs from the parcel, meaning he

still needed to make frequent visits there to care for them. There is no evidence in the record that Byron made uninvited visits to Wayne at his home or anywhere else on the property that was not associated with the care of his hogs. Byron argued that under these circumstances, he did not need an invitation or permission to visit “Dad’s Acres” for the purpose of feeding his hogs and that his visits to the parcel were not uninvited visits. Because Byron was still a legal owner of the property and had valuable property on “Dad’s Acres,” including his hogs, for which he was responsible, the district court’s finding that Byron had made repeated, uninvited visits to the property is not supported by sufficient evidence.

Wayne also testified at the evidentiary hearing that he frequently received emails and text messages from Byron, including after he had requested that Byron stop sending him emails and text messages. But the record contains no additional evidence of the content or the nature and extent of these communications. Nor does the record contain any indication that these emails and text messages had a substantial adverse effect, or were intended to have a substantial adverse effect, on Wayne’s safety, security, or privacy; Wayne described them as Byron “venting.” On this record, the district court’s finding that Byron made harassing phone calls or sent harassing text messages to Wayne is not supported by sufficient evidence.

Wayne further testified that Byron forced his way into the garage on “Dad’s Acres” on May 7, and that he felt threatened and afraid that Byron would strike him or his son with a metal object that Byron was carrying at the time. A video of this encounter, which was admitted at the evidentiary hearing, does appear to depict Byron, Wayne, and their sons

exchanging words outside of the garage, and Byron can be seen holding an object that appears to be made, in part, of metal. But this video footage does not appear to depict Byron forcing his way into the garage or engaging in any other objectively threatening behavior. And the record does not contain any evidence of other occasions on which Byron behaved in an objectively threatening manner towards Wayne. On this record, the district court's finding that Byron engaged in threatening behavior directed towards Wayne is not supported by sufficient evidence.

As to the district court's finding that Byron damaged Wayne's property, Byron admitted to leaving products that were previously stored in the farm shop outside overnight, but the record contains no evidence that any of these products were damaged as a result. The video discussed above depicts Byron using a pry bar to remove a two-by-four which had purportedly been nailed by Wayne across a door to the farm shop on "Dad's Acres." Byron also admitted to removing an overhead garage door from the inside of the farm shop. But Byron claimed that he performed these actions so that he could access the farm shop in order to get the clothing, equipment, and materials that he and his sons needed to care for his hogs. The record contains no evidence that Byron caused damage to Wayne's property by doing so or that the two-by-four and the overhead garage door could not be reinstalled on the door and garage opening. And while Wayne testified that Byron used a tractor to till the soil on a disputed parcel of land shortly before a snowstorm was forecast to occur, the record contains no evidence that any damage to the land actually resulted. On this record, the district court's finding that Byron damaged Wayne's property is not supported by sufficient evidence.

In sum, the district court's finding that Byron harassed Wayne within the meaning of section 609.748, and the district court's decision to issue the HRO, are not supported by sufficient evidence.

Reversed.