

*This opinion is nonprecedential except as provided by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
A20-1162**

Molly Elizabeth Joyce, petitioner,
Respondent,

vs.

Randy Clement,
Appellant.

**Filed May 10, 2021
Affirmed
Cochran, Judge**

Olmsted County District Court
File No. 55-CV-20-1828

Molly Elizabeth Joyce, Rochester, Minnesota (pro se respondent)

William L. French, French Law Office, Rochester, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Larkin, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's issuance of a harassment restraining order (HRO) against him. He argues that the record does not support the district court's finding that there are reasonable grounds to believe that he engaged in harassment of the petitioner. He also contends that the district court abused its discretion by ordering him to refrain from staring at the petitioner for more than one second. Because the record supports the district

court's finding of harassment and the district court did not abuse its discretion by including the anti-staring provision in the HRO, we affirm.

FACTS

Appellant Randy Clement and respondent Molly Joyce have lived across the street from each other for many years. Joyce's parents moved to the neighborhood at least 20 years ago. In 2013, Joyce moved in with her parents to assist them. Clement has lived in the neighborhood for approximately 25 years. A history of animus between the Joyce and Clement families culminated in the events that gave rise to this dispute.

In March 2020, Joyce filed a petition requesting an HRO against Clement. In the petition, Joyce alleged that Clement monitored her while she did yardwork, made an uninvited visit into her yard, and swerved his vehicle towards her and her mother while they were standing in the street. The day after Joyce filed the petition, a district court referee granted an ex parte HRO. The ex parte HRO provided that Clement could ask the court to vacate or change the order by requesting a hearing. On the day he was served with the ex parte HRO, Clement requested a hearing.

At the hearing, the district court heard testimony from Joyce, her parents, Clement, and Clement's partner. Joyce and her mother both testified that they were standing in the street in front of their house unloading groceries from a car when Clement drove a utility terrain vehicle (UTV) towards them. Both testified that Clement swerved his UTV towards them as he drove past them. Joyce testified that she needed to move herself and her mother out of the way of the UTV to avoid being hit and that Clement came within a hand's width of hitting the car. Her mother testified that Clement would have driven over her toes if

Joyce had not pulled her back. Joyce's father testified that he also observed Joyce pull her mother out of the way of Clement's UTV. According to Joyce, the incident caused a great deal of stress for both Joyce and her mother.

Joyce and her father testified that Clement would often engage in behaviors that made Joyce feel intimidated while she worked in her yard. Joyce testified that, nine months prior to the swerving incident, she had spoken to Clement regarding a matter concerning a water well shared by their respective properties. Clement has an easement granting him access to the well. According to Joyce, Clement had entered the Joyce property and left multiple bottles of bleach near the well. Joyce requested that he not do so without permission. Clement's partner testified that Clement was upset after discussing the matter with Joyce. Joyce testified that Clement behaved more antagonistically towards her after the discussion of the well matter.

Clement testified that he had never deliberately swerved his UTV towards Joyce and her mother. Clement acknowledged driving the UTV on the street in question on the day of the alleged incident but testified that he did not recall driving by Joyce or her mother.

Based on the testimony, the district court found reasonable grounds to believe that Clement engaged in harassment of Joyce. Specifically, the district court found that one incident of "physical assault" by Clement occurred when Clement swerved his UTV towards Joyce and her mother. The district court based its finding of assault on the testimony of Joyce and her parents, which it found to be more credible than the testimony of Clement. The district court also found that the well incident gave context to Clement's state of mind during the swerving incident.

After the hearing, the district court issued an HRO effective until August 10, 2021. The HRO prohibits Clement from harassing Joyce, from having any contact with Joyce, and from entering the Joyce family property without permission. The HRO also provides that Clement “can be anywhere in his own yard and boulevard, but [can]not engage in any verbal exchange or visual staring to exceed one second” with Joyce. Clement appeals.

DECISION

A district court’s authority to issue an HRO is granted by Minn. Stat. § 609.748 (2020). A district court may issue an HRO “order[ing] the respondent to cease or avoid harassment of another person” or “order[ing] the respondent to have no contact with another person” if the court finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5. For purposes of the HRO statute, “[h]arassment” includes “a single incident of physical . . . assault.” *Id.*, subd. 1(a)(1).

We review a district court’s issuance of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). “A court abuses its discretion if it makes findings of fact that are not supported by the record, misapplies the law, or resolves the matter in a manner that is contrary to logic and the facts on record.” *Sinda v. Sinda*, 949 N.W.2d 170, 175 (Minn. App. 2020) (quotation omitted). “A district court’s 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). The interpretation of the HRO statute is a question of law, which we review de novo. *Peterson*, 755 N.W.2d at 761.

Clement argues that the district court abused its discretion when it found that he engaged in “harassment” within the meaning of the statute. Clement further argues that the district court abused its discretion by ordering that he not stare at Joyce for more than one second. We address each argument in turn.

I. The district court did not abuse its discretion by finding that Clement engaged in harassment.

The district court found reasonable grounds to believe that Clement engaged in “harassment” of Joyce when he swerved his UTV near Joyce and her mother. The district court concluded that this conduct constituted “physical assault” within the meaning of the HRO statute. Clement argues that this conduct does not constitute “physical assault” because there is no evidence that he hit or otherwise physically contacted Joyce or her mother with his UTV. He contends that a finding of “harassment” based on physical assault under the HRO statute requires evidence of actual physical contact. We disagree.

As noted above, the term “harassment” as used in the HRO statute includes a single incident of “physical assault.” Minn. Stat. § 609.748, subd. 1(a)(1). In *Peterson*, we examined the scope of the phrase “physical . . . assault” as used in the HRO statute. 755 N.W.2d at 762-63. We held that to prove physical assault within the meaning of the statute, “a petitioner must prove the physical aspects of the statutory definition of assault in chapter 609, *i.e.*[,] the intentional infliction of or *attempt to inflict bodily harm* upon another.” *Id.* at 763 (emphasis added) (quotation omitted). Thus, the phrase

“physical . . . assault” for the purpose of Minn. Stat. § 609.748, subd. 1(a)(1), includes not just the intentional infliction of bodily harm but also an “attempt to inflict bodily harm.” *Id.* (quotation omitted).

An attempt can occur without physical contact. “Attempt” is defined as “an act which is a substantial step toward . . . the commission of [a] crime” performed with the intent to commit that crime. Minn. Stat. § 609.17, subd. 1 (2020). Consequently, to find “physical assault” within the meaning of the HRO statute, the district court only needed to find that Clement intended to inflict bodily harm upon Joyce and that he took a substantial step towards inflicting bodily harm upon Joyce.

The record supports the district court’s determination that Clement took a substantial step towards inflicting bodily harm when he swerved his UTV towards Joyce and her mother. Joyce testified that, in March 2020, Clement almost struck her and her mother with his UTV when they were unloading groceries from their car, which was parked on the street near their house. She testified that Clement was driving his UTV in their direction, then “swerved over” towards them and almost hit them. She further testified that she had to “move [her] mother’s body out of the way” to avoid being hit. According to Joyce, Clement came a “hand’s breadth” away from the car. Joyce’s mother likewise testified that Clement “came very close to where I was taking something out of the far side of the car. And [Joyce] pulled me back. And if she wouldn’t, I think he would have been driving over my toes.” Joyce’s father also testified that he saw Joyce pull her mother out of the way of the UTV to avoid being hit. This testimony supports the district court’s

finding that Clement physically assaulted Joyce and her mother within the meaning of the HRO statute.

In determining that a physical assault occurred, the district court considered Clement's denial of the swerving incident. But the district court found the testimony of Joyce and her parents more credible. The district court explained that it did not find Clement's denial believable, particularly given the history between the parties. Because the district court is in a superior position to assess witness credibility, we defer to the district court's credibility determinations. *In re Welfare of Children of S.R.K.*, 911 N.W.2d 821, 831 (Minn. 2018). Accordingly, we conclude that the record fully supports the district court's determination that Clement physically assaulted Joyce and thereby engaged in "harassment" within the meaning of the HRO statute.

In sum, the district court did not abuse its discretion when it found a reasonable basis to believe that Clement engaged in harassment of Joyce.

II. The district court did not abuse its discretion by ordering Clement to refrain from staring at Joyce for longer than one second.

Based on its finding of harassment, the district court issued an HRO that included provisions prohibiting Clement from having any contact with Joyce. One provision specifically provided that Clement "can be anywhere in his own yard and boulevard, but [can]not engage in any verbal exchange or visual staring to exceed one second." Clement argues that the district court abused its discretion by ordering that he refrain from staring at Joyce for more than one second. Clement challenges this aspect of the HRO as both

violating his right to due process and lacking support in the record. We are not persuaded by either argument.

First, Clement fails to provide any legal support for his due process argument. He cites to only one case, *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705 (1973), the applicability of which is unclear. In *Roe*, the Supreme Court addressed the right to privacy in the context of examining the constitutionality of statutes that criminalized abortion. *Id.* at 153, 93 S. Ct. at 727. Given that Clement does not argue that the district court's order interferes with his right to privacy, *Roe* is inapposite. Because Clement has not cited any relevant legal authority in support of his due process argument, we decline to consider it. *See In re Reichmann Land & Cattle, LLP*, 867 N.W.2d 502, 506 n.2 (Minn. 2015) (declining to consider an “inadequately briefed” argument); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (noting that a party who inadequately briefs an argument waives that argument).

Clement next argues that the district court lacked the necessary factual and legal basis to order that he refrain from staring at Joyce for more than one second. While the anti-staring provision at issue is unusual, the district court acted well within its statutory authority when it included the provision in the HRO. Under Minn. Stat. § 609.748, when a district court finds that there are reasonable grounds to believe that an individual has engaged in harassment, the district court may issue an HRO that orders the individual “*to have no contact*” with the petitioner. Minn. Stat. § 609.748, subd. 5(a)(2) (emphasis added). Because staring is a type of visual contact, the district court's requirement that Clement refrain from staring at Joyce fits squarely within its statutory authority. And,

Clement has provided no authority to support his argument that a district court abuses its discretion by including such a provision in an HRO.

Additionally, it appears that the district court specifically imposed the one-second requirement in response to Clement's counsel's insistence at the end of the HRO hearing that the district court clarify the terms of the HRO. In explaining its order, the district court originally stated: "So if you see her on her property, obviously you can't go onto their property, but if you see her out and about, look the other way. Obviously you can be anywhere on your property as well as the boulevard." Clement's counsel then asked the following series of questions to the district court:

COUNSEL: Your Honor, another question. He can't look at her property, is that correct?

THE COURT: I did not say that. He can have no contact with Ms. Joyce, nor can he harass her. So obviously—

COUNSEL: Well, you said in your finding that if she's in her yard, he has to look the other way.

THE COURT: I guess what I'm saying is that he not engage in any verbal or even visual, I guess. He can continue to look, but just don't engage her in any way.

COUNSEL: I think we need to define this a little bit more clearly. You're saying he can look at the property—

THE COURT: I don't want him staring at the property or staring at Molly Joyce, how is that?

COUNSEL: How long? How many seconds?

THE COURT: I would say for more than one second. Enough to identify she's there, then he can look away.

COUNSEL: That's part of your order?

THE COURT: That will be part of my order if you want it that specific.

This exchanges makes clear that the court's one-second limitation was provided at the behest of Clement's counsel to clarify with specificity the terms of the order. The limitation allows Clement time to identify Joyce and avoid continuing to look at her. On

this record, we conclude that the district court did not abuse its discretion by including this provision in the HRO.¹

Affirmed.

¹ Clement introduces two new arguments in his reply brief. He claims that (1) the district court's decision to grant the HRO was based on factors outside the record, and (2) its order imposed an improper condition on the use of his easement over Molly Joyce's property. Generally, new arguments cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010); *Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) ("If an argument is raised in a reply brief but not raised in an appellant's main brief, and it exceeds the scope of the respondent's brief, it is not properly before [the court of appeals]"), *review denied* (Minn. Feb. 26, 2003). Because these arguments were not raised in Clement's initial brief or Joyce's brief, we decline to reach them.