

*This opinion is nonprecedential except as provided by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
A21-0367**

Joseph Lee Selisker,
Respondent,

vs.

William Paul Kiley, Jr.,
Appellant.

**Filed December 20, 2021
Reversed and remanded
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-CV-21-97

Joseph Lee Selisker, St. Cloud, Minnesota (pro se respondent)

John A. Abress, Franz Hultgren Evenson, P.A., St. Cloud, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and
Gaïtas, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from the district court's grant of a harassment restraining order (HRO), appellant William Paul Kiley, Jr., argues that the district court erred because it made no findings of harassment and because Kiley did not agree to issuance of the HRO. Because the district court's order did not reflect an agreement of the parties, we reverse and remand for further proceedings.

FACTS

Respondent Joseph Lee Selisker, the boyfriend of Kiley's ex-wife, petitioned for an HRO, alleging that Kiley was harassing him. The district court granted an ex parte HRO, and Kiley requested a hearing. At the hearing, Kiley and Selisker appeared, and both were unrepresented by counsel.

At the start of the hearing, the district court put the parties under oath but, before taking testimony or admitting any evidence, proposed that the parties agree to a "joint," or two-way, HRO. While addressing Selisker, the district court explained:

So my thought would be rather than before it escalates anymore that we have that joint order basically saying that nobody is going to harass anybody and go your separate ways. So if Mr. Kiley were to come to your house again, call you up, send you a disappointing email, a harassing email, or *vice versa*

(Emphasis added.) Selisker indicated that he agreed with the proposal, although Kiley had not petitioned for an HRO against Selisker. The district court then asked Kiley if he was "okay" with the proposed resolution, and Kiley said, "Yes." The district court said that it would not "find harassment at this time" but would issue an HRO.

Following the hearing, the court granted an HRO that restricted Kiley but not Selisker. In the order, the district court wrote, "[Kiley] denies the allegations of the Petition but has no objection to the issuance of a Restraining Order. The court makes no findings of harassment."

Kiley appeals.

DECISION

Kiley argues that the district court abused its discretion when it issued an HRO against him without making a finding of harassment and that the district court's order did not reflect an agreement between Kiley and Selisker.

Individuals may petition for an HRO under Minn. Stat. § 609.748 (2020). If the respondent requests a hearing, the district court may issue an HRO provided that the district court finds “that there are reasonable grounds to believe that the respondent has engaged in harassment.” *Id.*, subd. 5(b). We review the issuance of an HRO for abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

Kiley first argues that the district court lacks authority under the statute to grant an HRO without a finding of harassment. We note that, in other contexts, stipulations or agreements of the parties have formed the basis for judgments or orders. *See, e.g., Anderson v. Anderson*, 225 N.W.2d 837, 840 (Minn. 1975) (affirming marital-dissolution judgment incorporating parties' stipulation); *State ex rel. Bassin v. Dist. Ct. of Hennepin Cnty.*, 259 N.W. 542, 543-44 (Minn. 1935) (affirming order of district court extending redemption period in foreclosure action based on the parties' agreement). But we need not determine whether for some reason the district court's authority under the HRO statute is different because, even assuming that the district court is authorized to issue an HRO without findings based on a stipulation or agreement, the HRO issued here did not accurately reflect an agreement of the parties.

Generally, when an order or judgment is based solely on the agreement of the parties, “it is the duty of the court to enter judgment in accordance with the agreement of

the parties and the court's authority is limited by the consent or stipulation." *Hentschel v. Smith*, 153 N.W.2d 199, 206 (Minn. 1967). The court cannot, "by judicial fiat, impose conditions on the parties to which they did not stipulate and thereby deprive the parties of their 'day in court.'" *Toughill v. Toughill*, 609 N.W.2d 634, 638 n.1 (Minn. App. 2000); *see also Mechtel v. Mechtel*, 528 N.W.2d 916, 919-20 (Minn. App. 1995) (reversing mutual restraining order in an order-for-protection proceeding when the appellant-petitioner did not clearly agree to a restraining order against her, noting that, "[s]ince appellant was pro se, the district court should have been very careful to make sure that she was agreeing to a mutual restraining order").

Here, it is unclear from the record of the hearing exactly what the parties agreed to, but the record does *not* show that Kiley agreed to a one-way HRO that restricted only him and not Selisker. At the hearing, the district court described a "joint order" that "nobody is going to harass anybody" and said that the order would go "both ways." Therefore, the HRO that was issued—restricting only Kiley—did not reflect the discussion between the district court and the unrepresented parties at the HRO hearing. The district court thus abused its discretion, and we reverse the HRO and remand the case to the district court for further proceedings.

Reversed and remanded.