

*This opinion is nonprecedential except as provided by  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  
A21-0577**

Kallys Albert Sr.,  
Appellant,

vs.

Allen Eduardo Diaz,  
Respondent.

**Filed December 6, 2021  
Affirmed  
Reilly, Judge**

Dakota County District Court  
File No. 19HA-CV-21-489

Kallys Albert Sr., Minneapolis, Minnesota (pro se appellant)

Allen Eduardo Diaz, Eagan, Minnesota (pro se respondent)

Considered and decided by Gaïtas, Presiding Judge; Ross, Judge; and Reilly, Judge.

**NONPRECEDENTIAL OPINION**

**REILLY**, Judge

Appellant challenges the district court's decision to dismiss his petition for a harassment restraining order without a full evidentiary hearing, arguing that his petition stated a sufficient basis for the relief sought and that the district court erred in determining his petition was made in retaliation for events in his daughter's marital dissolution case. Because the district court did not abuse its discretion by dismissing appellant's harassment restraining order petition without an evidentiary hearing, we affirm.

## FACTS

Appellant Kallys Albert Sr. (Kallys) petitioned the district court for a harassment restraining order (HRO) against respondents Allen Diaz (Allen) and his current romantic partner, Anastasia Nicole Zay Zay Diaz (Anastasia).<sup>1</sup> Allen was previously married to Kallys's adult daughter, Nkemdilim Kelly Albert (Kelly), and the couple divorced in or around December 2017.

In his petition for an HRO and accompanying affidavit, Kallys alleged that Allen and Anastasia frightened him by claiming they had proof that Kallys's grandchildren were not safe in his home. Kallys also alleged that Allen and Anastasia took unauthorized possession of Kelly's laptop and destroyed her property. Finally, he alleged that Allen tarnished the family's reputation by forging documents, making false accusations, and seeking to deprive Kelly of legal custody of the joint minor children. The HRO petition referred the court to about sixty-seven screenshots of electronic conversations between Kelly and Allen as further instances of alleged harassment.

In his prayer for relief, Kallys requested an ex parte order granting the HRO, asked the court to vacate an existing HRO against Kelly on behalf of Anastasia, and sought a custody hearing on behalf of the minor children. Kallys requested a hearing if the court denied his request for an ex parte HRO. The district court denied the ex parte request and granted his request for a hearing on the matter.

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<sup>1</sup> Because several individuals share the same surname, we use first names to avoid confusion.

The district court scheduled an HRO hearing; both parties represented themselves. Because of the COVID-19 pandemic, the district court conducted the hearing by videoconference. Before the hearing, Kallys submitted pages of screenshots of text messages and emails between Allen and Kelly, court documents from a prior restraining order against Kelly, and other miscellaneous documents as exhibits. The record reflects that the district court received and reviewed Kallys's exhibits.

Without hearing testimony from the parties or potential witnesses, the district court dismissed the matter at the start of the scheduled hearing, concluding that Kallys pleaded nothing that would allow the court to go forward with a hearing. The district court then issued a one-page order denying the HRO. The order stated that the petition failed to state a legal basis for an HRO and that the petition was made in retaliation of a family court matter. Kallys filed a motion for reconsideration, arguing his petition had a proper basis under the statute and that the district court improperly dismissed the matter. The district court denied the motion for reconsideration.

Kallys appeals the district court's dismissal of his petition for an HRO.<sup>2</sup>

### **DECISION**

Kallys argues that the district court erred in determining (1) that he was not entitled to a full evidentiary hearing because his HRO petition did not state a sufficient basis for

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<sup>2</sup> Allen and Anastasia did not file a responsive brief. "If the respondent fails or neglects to serve and file its brief, the case shall be determined on the merits." Minn. R. Civ. App. P. 142.03. This court previously issued an order stating that the case would be submitted for consideration on the merits under rule 142.03.

relief sought, and (2) that the HRO petition was retaliatory. We address each argument in turn.

**I. The district court did not abuse its discretion when it dismissed Kallys’s petition for an HRO.**

**A. Kallys’s HRO petition failed to state a basis for relief.**

A district court may issue an HRO if “there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2020); *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). “Harassment,” for purposes of an HRO, is defined by statute to require either (1) “a single incident of physical or sexual assault” or (2) “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.” Minn. Stat. § 609.748, subd. 1(a)(1) (2020). A single incident of the latter type of conduct is not harassment. *Peterson v. Johnson*, 755 N.W.2d 758, 766 (Minn. App. 2008).

A person seeking an HRO from the district court must file a petition for relief that alleges facts sufficient to show the name of the alleged harassment victim, the name of the respondent, and that the respondent has engaged in harassment. Minn. Stat. § 609.748, subd. 3(a)(1)-(3) (2020). A person may seek an HRO on behalf of themselves or on behalf of their minor child. *Id.*, subd. 2 (2020). This court reviews a district court’s decision to issue an HRO for an abuse of discretion. *Kush*, 683 N.W.2d at 843. This court applies a de novo standard of review to whether the facts found by the district court satisfy the definition of harassment. *See Peterson*, 755 N.W.2d at 761 (noting that the authority to

grant an HRO is statutory, and that appellate courts review questions of statutory interpretation de novo).

Following the submission of Kallys's petition, the district court stated on the record:

Having reviewed [the] entire petition, Mr. Albert, there is nothing that is pled there that would support or even allow for us to go forward with a hearing today, and at this time, this particular matter is dismissed, and I will send you both a copy of that order.

The later order mailed to the parties stated:

The Petition fails to state a legal basis to support this Respondent harassed this Petitioner. Petitioner's daughter is Respondent's ex-wife. There is a contentious divorce file and multiple restraining orders regarding Respondent and Petitioner's daughter. Petitioner is unhappy with the Family Court matter and the petition is retaliatory. IT IS ORDERED THE MATTER IS DISMISSED.

We agree with the district court that Kallys's HRO petition did not allege facts that, if true, would allow the district court to rule that Allen and Anastasia engaged in harassment. Kallys raised allegations of harassment mainly on behalf of his adult daughter, Kelly.<sup>3</sup> Yet, the HRO statute only allows a person who is the victim of harassment or their guardian if they are a minor to bring a petition for an HRO. Minn. Stat § 609.748, subd. 2 (emphasis added). Kelly was born in 1993. She is not his minor child or a person under Kallys's custody and care as required by the HRO statute. For that reason, Kallys cannot

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<sup>3</sup> Kallys alleges on behalf of his adult daughter that Allen sexually assaulted Kelly sometime between 2017-2018, that Anastasia and Allen used Kelly and Allen's children to stalk and gain details about her private life between 2018-2019, and that Allen and Anastasia stole Kelly's laptop and deleted photographs and schoolwork in or around March 2018. Later in the petition, he also alleges that Allen harassed Kelly by calling Child Protective Services and her employer to make false allegations about Kelly.

bring an HRO on her behalf. Thus, the facts in Kallys's petition pertaining to the alleged harassment of Kelly are legally insufficient to allow the district court to grant an HRO.

Kallys's petition also detailed alleged acts of harassment toward him. Kallys first alleges in his HRO petition that Allen and Anastasia frightened Kallys from 2018 through November 2, 2020, by alleging they have proof that his grandchildren are not safe in his home. It is unclear why Kallys alleges this harassment occurred for two years, because he provides no detail about the allegations, and the only exhibit suggesting that the allegation occurred is a screenshot of a text message between Allen and Kelly dated October 24 and November 2. That screenshot states: "I have proof that my children are not even safe at your fathers house . . . ." and "[a]ll I am saying is I won't let you put [the children] in the same mental situation you got put in when you were a child during you[r] parents divorce[.]".

Kallys argues that such allegations devastated his reputation in his community. But nothing in the petition or accompanying exhibits shows that either Allen or Anastasia shared the information with third parties in the community. Further, this allegation appears to be a single instance of alleged harassment by Allen and Anastasia. It does not amount to a single instance of "physical or sexual harassment" or arise to an instance intended to have "a substantial adverse effect on the safety, security or privacy" of Kallys as required by Minn. Stat. § 609.748, subd. 1(a)(1). *See generally Szarzynski v. Szarzynski*, 732 N.W.2d 285, 292 (Minn. App. 2007) (noting, in the context of addressing whether a party moving to modify custody made the prima facie case that would entitle the movant to an

evidentiary hearing, that allegations that are conclusory, vague, or unsupported by specific evidence are insufficient to make a prima facie case).

Kallys next alleges in his petition that the continual harassment haunts, scares, and threatens his integrity, but again does not detail any alleged ongoing harassment in his petition, affidavit, or accompanying exhibits. Kallys appears to imply that the allegations against himself, including that the children are not safe in his home, constitute ongoing and severe threats to himself and his family because the statements continue to harm the relationship between himself and the children. While this second allegation seems to suggest repeated threats, the conclusory and vague nature of his allegations are insufficient to arise to the level of incidents intended to have “a substantial adverse effect on the safety, security or privacy” of Kallys as required by statute. Minn. Stat. § 609.748, subd. 1(a)(1). Kallys cites no other specific evidence tending to prove that Allen and Anastasia had an intent to affect the safety, security, or privacy of Kallys. *See Peterson*, 755 N.W.2d at 764. Thus, the allegations made on his own behalf are insufficient to justify an evidentiary hearing and the district court did not abuse its discretion when it dismissed the petition.

**B. Kallys was not entitled to a full evidentiary hearing.**

Minnesota statutes section 609.748 mandates that a district court hold a hearing on the merits of the petition if requested by the petitioner. Minn. Stat. § 609.748, subd. 3(a)(3). But the statute permits dismissal of petitions that lack merit: “Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.” *Id.* This court reviews a district court’s application of the HRO statute under an abuse of discretion standard. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000).

The district court scheduled a hearing on the matter, and the court received and reviewed all sixty-seven exhibits submitted by Kallys. At the start of the hearing, the district court determined that Kallys's petition failed to state a basis for an HRO and dismissed the matter. Kallys argues the district court's conclusion that the petition had "no legal basis" was an error because the district court dismissed the matter before allowing the parties to testify, present evidence, and otherwise prove or disprove the allegations. We disagree. Under the specific language of the HRO statute, a petitioner does not have an absolute right to a full hearing on a meritless matter. Minn. Stat. § 609.748, subd. 3(a)(3). While the district court scheduled an HRO hearing upon Kallys's request, Kallys's petition failed to make allegations meriting an evidentiary hearing, and that flaw in his petition was not remedied by his other submissions, all of which the district court reviewed. Thus, the district court did not err when it denied Kallys a full evidentiary hearing.

**II. The district court did not err in finding Kallys's HRO petition was retaliatory.**

Finally, Kallys argues the district court improperly based the dismissal of the HRO on an unrelated divorce file between his daughter and Allen. "[A] district court's findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous." *Witchell*, 606 N.W.2d at 732; *see also* Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted). Under the clear-error standard of review, "an appellate court need not go into an extended discussion of the evidence to prove or



demonstrate the correctness of the findings of the trial court.” *In re Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (quotation omitted).

In its order denying the HRO, the district court dismissed the matter, finding that the petition “fails to state a legal basis to support this Respondent harassed this Petitioner,” and that “Petitioner is unhappy with the Family court matter and the petition is retaliatory.” Kallys argues the district court erred in finding the HRO petition to be retaliatory because the family court matters were unrelated to the HRO petition. Instead, he argues, the court should have based its findings solely on the party’s testimony in a hearing.

But whether the district court found the petition was submitted in retaliation to the family court matter is irrelevant to whether he was entitled to an evidentiary hearing. As stated above, Kallys failed to make allegations that would merit an evidentiary hearing, and the court did not err in denying him an evidentiary hearing. Additionally, after reviewing the district court record as a whole, Kallys raised many concerns about his daughter’s family court matters. For example, in his petition and affidavit, Kallys referenced and cited at least five different family court files. As a result, when the district court found the petition was submitted in retaliation to the family court matter, the district court did not clearly err in doing so. *See Cook v. Arimitsu*, 907 N.W.2d 233, 240 n.3 (Minn. App. 2018) (stating that an appellate court’s “duty is performed when [it] consider[s] all the evidence, as we have done here, and determine[s] that it reasonably supports the findings”).

In his petition, Kallys asked the district court to change the outcome of these prior family law cases through this current HRO petition. He argues that certain statements

made in prior court cases amount to harassment and must be resolved in his favor or otherwise proven in an HRO hearing. We disagree. The primary purpose of an HRO is to order someone to cease harassment or order no contact. Minn. Stat. § 609.748, subd. 5(a)(1)-(2) (2020). It is not intended to engage in collateral attacks on past court decisions in other files. Thus, Kallys cannot bring an HRO to resolve, or change the resolution of, past or pending court matters on his daughter's behalf. Because Kallys's HRO petition, affidavit, and exhibits submitted to the district court raised many concerns about his daughter's family court matters, the district court's findings of fact were not clearly erroneous.

In sum, because Kallys's petition for an HRO and supporting documents failed to state a sufficient basis for relief, he is not entitled to a hearing on a meritless matter, and because the district court found, based on the record, that the petition was retaliatory, the district court did not err in dismissing Kallys's HRO petition.

**Affirmed.**