

*This opinion is nonprecedential except as provided by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
A21-1506**

Heidi Lee Wolf,
Respondent,

vs.

Bradley Athmann,
Appellant.

**Filed July 25, 2022
Reversed
Frisch, Judge**

Mahnomen County District Court
File No. 44-CV-21-330

Heidi Lee Wolf, East Grand Forks, Minnesota (pro se respondent)

Rich Kenly, Kenly Law Office, Backus, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Johnson,
Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion in issuing a harassment restraining order (HRO) against him because his conduct does not satisfy the statutory definition of harassment and the district court's findings of fact are not supported by the record. We reverse.

FACTS

Since late 2020, appellant Bradley Athmann and the family of respondent Heidi Lee Wolf have been involved in an ongoing real property dispute.¹ The dispute relates to a claim by Wolf's in-laws for adverse possession against Athmann and other adjacent landowners and is the subject of a separate court file. In October 2020, Wolf's family filed a motion in the separate file seeking a temporary restraining order (TRO) to prohibit Athmann and other landowners from entering the disputed property, but the district court denied the motion.²

On June 7, 2021, Wolf filed a petition for an HRO, alleging that Athmann engaged in the following acts of harassment over the preceding week: driving by Wolf's living quarters "several times a day in many different vehicles"; pulling into the area where her living quarters were located and getting out of his vehicle; walking behind and looking into her living quarters; threatening to tow her living quarters and vehicle from the property;

¹ Wolf did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

² As part of the HRO proceedings in this case, the district court purported to take judicial notice of the entire court file in the separate adverse-possession proceeding. We construe the district court's action as taking judicial notice of certain unobjected-to *documents* included in appellant's addendum, including the complaint, the Wolfs' motion for a TRO against Athmann and other landowners, and the district court's denial of that motion. We note separately that it is not proper for a district court to take judicial notice of an entire court file; the Minnesota Rules of Evidence allow for judicial notice of *facts* that are "either generally known within the territorial jurisdiction of the court or are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Minn. R. Evid. 201(b); *see also In re Zemple*, 489 N.W.2d 818, 820 (Minn. App. 1992) (holding district court may take judicial notice of prior ruling but not prior testimonial assertions).

and pulling his vehicle over to the side of the road, making her feel “unsafe and vulnerable.” Wolf alleged that she often runs into her in-laws’ cabin when she sees Athmann in the vicinity because she is uncertain of his behavior.

On June 8, 2021, the district court issued an ex parte order granting a temporary HRO against Athmann.³ A two-day hearing followed in August 2021, during which Wolf, Athmann, a sheriff’s deputy, and a neighbor testified. Wolf submitted excerpts from security footage of the property taken between June 1 and June 6 and Athmann submitted a picture of a “No Trespassing” sign and surveyor’s stake located on the disputed property.

Wolf testified as to what she considered harassing behaviors. She testified that, over the course of the previous 20 years, she sometimes stayed in a camper located on the disputed property when visiting her in-laws’ cabin. In June 2021, however, she stayed in an “Ice Castle” trailer located on the disputed property.⁴ Wolf testified that she spends a lot of time in the trailer, and her activities inside the trailer include sleeping, using the bathroom, and changing her clothes. The trailer is located adjacent to the public road separating the disputed property from other portions of Athmann’s property.

Wolf further testified that Athmann would drive slowly down the public road, pass by the trailer and look only at it, walk over to the trailer up to “four times a day,” walk

³ A referee heard this matter and made recommendations later adopted by the district court. Because the district court adopted the referee’s recommendations, we refer to the actions of the referee as the actions of the district court. Minn. R. Civ. P. 52.01 (“The findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.”).

⁴ “Ice Castle” is a Minnesota manufacturer of RV-style fish houses.

around the trailer, and look in the windows of the trailer. She also referenced a confrontation she had with Athmann where she claimed that Athmann aggressively told her that she needed to move her trailer and vehicle or he would have them towed because they were located on his property. When asked about how these acts affected her, Wolf stated, “I’m constantly looking over my shoulder wondering if he’s coming down the road. Telling my kids to stay inside. . . . I go running in usually when I see him coming down the road. I don’t know what he is going to do.”

Wolf also introduced into evidence security footage documenting Athmann’s actions over the relevant time period. Some video footage shows Athmann’s activity on the disputed property on June 1, including pulling his vehicle up to his property on the right side of the road, exiting the vehicle and crossing the road to where the trailer is located, walking around the trailer while looking at the ground, picking up a wooden stake from the ground, and investigating another wooden stake adjacent to the trailer. Other video footage shows Athmann returning to the property on June 3 and 5. The video footage from June 6 depicts Athmann taking photos of the property and captures the confrontation between Athmann and Wolf and subsequent conversation with a sheriff’s deputy.

On cross-examination, Wolf testified that the video footage depicted these instances of alleged harassment. Wolf also testified that although she felt threatened by Athmann’s presence and demand to move her vehicles, Wolf confirmed that Athmann never brandished his firearm at her or made any other threats.

Athmann called two witnesses to testify on his behalf. A deputy testified that he was called to the property by both parties, but the deputy did not observe Athmann behave

in a threatening manner and took no action. A neighbor of the Wolfs testified that, although he is not a trained surveyor or “cartologist,” he did not believe that the disputed property where the trailer was located belongs to the Wolfs.

Athmann also testified. He claimed that, following an October 2020 survey, a surveyor had planted wooden stakes to mark his property in the area near where the trailer had been parked. Athmann testified that the surveyor reported that the disputed property belonged to him and not the Wolfs. Athmann testified that when he drove by the disputed property on June 1, he noticed the trailer parked near where the surveyor had planted the stakes marking his property line and became concerned that the trailer was parked on what he believed to be his property. Athmann then located one of the wooden stakes on the ground behind the trailer, which had been removed from the location where it was originally placed.

Athmann next described his actions as depicted in the security footage. Athmann explained that he was looking at the ground and walking around the trailer to try and find the hole in the ground where the stake had been planted in order to reestablish the property line. Athmann continued to return to the property to look for the hole where the stake had been planted. Athmann denied looking into the trailer and was unaware that anyone was inside. He also testified that he had not spoken with Wolf before their confrontation on June 6.

On cross-examination, Athmann denied seeing the trailer or any other camper on the disputed property prior to June 2021. He admitted to monitoring the property but denied monitoring Wolf herself.

On September 14, 2021, the district court issued an HRO against Athmann and enjoined him from going within 20 feet of the disputed property. In a form order, the district court found harassment had occurred because Athmann had “walk[ed] around [Wolf’s] Ice Castle Trailer and monitor[ed] [Wolf] on several occasions; including police needing to be called to the property.” The district court also found that Athmann “knew, or should have known from litigation, he was not welcome at the [trailer]” and that he continued to “cre[ep] around [the trailer] even after being asked to not do so.” The district court explicitly cited to the video evidence to support its finding of harassment. Lastly, the district court found that the harassment substantially affected Wolf’s safety, security, or privacy. Athmann appeals.

DECISION

Athmann argues that the district court abused its discretion by issuing an HRO against him. We review a district court’s decision to issue an HRO for an abuse of discretion. *Borth v. Borth*, 970 N.W.2d 699, 701 (Minn. App. 2022). “A district 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.” *Id.* (quotation omitted); *see also Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022). We will only set aside a district court’s findings of fact if they are clearly erroneous. *Witchell v. Witchell*, 606 N.W.2d 730, 732 (Minn. App. 2000); *see also* Minn. R. Civ. P. 52.01 (reciting clear-error standard). Facts are clearly erroneous if we are left with a “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). We apply a de novo

standard of review to the district court's interpretation of the HRO statute. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

Under Minnesota Statutes section 609.748, subdivision 5(b)(3) (2020), a district court may issue an HRO if it finds “reasonable grounds to believe that [a person] has engaged in harassment.” “Harassment,” in turn, is defined in relevant part as “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). Thus, a determination of harassment under section 609.748 “requires both objectively unreasonable conduct or intent on the part of the harasser and an objectively reasonable belief on the part of the person subject to harassing conduct.” *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006). Objectively unreasonable conduct is conduct that “goes beyond an acceptable expression of outrage and civilized conduct.” *Kush v. Mathison*, 683 N.W.2d 841, 846 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004).

The district court issued the HRO based on its findings that Athmann committed several intrusive or unwanted acts, including “walking around [Wolf’s] Ice Castle Trailer,” “monitoring [Wolf]” to the point that law enforcement “need[ed] to be called to the property,” and, despite knowing from ongoing litigation that “he was not welcome at [the trailer], “he continually crept around [the trailer] even after being asked to not do so.” The record does not support any of these findings.

First, the district court’s finding that the security footage “clearly shows intrusive and unwanted acts” by Athmann is clearly erroneous. The security footage cited by the

district court does not depict conduct that went “beyond an acceptable expression of outrage and civilized conduct.” *Id.* Our review of the security footage shows Athmann walking around the trailer looking at the ground while holding a wooden stake in his hands. The footage does not show Athmann looking into the trailer or interacting with it or its occupants. Other footage shows Athmann taking pictures of the property and monitoring the property while driving by. Only one clip from the security footage depicts an in-person interaction between Athmann and Wolf, which occurred in the presence of a sheriff’s deputy. This video footage is unremarkable, and the deputy testified that police intervention was not warranted given that Athmann did not act in a threatening manner.

Second, the district court’s finding that Athmann monitored Wolf is clearly erroneous. Athmann admits, and the evidence shows, that he monitored *the property*, but no evidence in the record establishes that Athmann monitored Wolf herself. And although Wolf testified that she believed Athmann looked in the windows of the trailer, she also testified that this behavior is specifically depicted in the security footage. Our review of that footage does not show Athmann looking in the windows of the trailer or attempting to monitor Wolf in any way. And because Wolf presented no evidence that Athmann was aware that Wolf was inside of the trailer while he was present on the property, she failed to meet her burden of proof to establish grounds for issuance of an HRO on this basis. *See C.O. v. Doe*, 757 N.W.2d 343, 352 (Minn. 2008) (stating that when a statute does not specify each party’s burden of proof, “[t]he general rule is that the burden of proof rests on the party seeking to benefit from a statutory provision”).

Third, the district court's finding that Athmann's behavior resulted in police "needing" to be called to the property is clearly erroneous. There is no evidence in the record that police "needed" to be called to the property; Wolf instead testified that she called police "to ask questions on what can and cannot be done," not out of any necessity. And again, the deputy testified that no police action was warranted.

Fourth, the district court's finding that Athmann knew from the ongoing litigation that he was not welcome on the property is clearly erroneous. To the contrary, the district court in the adverse-possession proceeding denied the Wolfs' motion for a TRO to prohibit Athmann from entering the disputed property. And the record contains no evidence that Wolf or anyone else expressly communicated to Athmann that he was unwelcome on the disputed property.

Finally, the district court's finding that Athmann continued to "cre[ep] around" the trailer after being "asked to not do so" is clearly erroneous. The record contains no evidence that anyone ever expressly asked Athmann to exit the disputed property.

Because the district court issued an HRO based on clearly erroneous factual findings, we reverse and do not address Athmann's alternative arguments in support of vacating the HRO.

Reversed.