

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0174**

Courtney Ann Houck,
Appellant,

vs.

Alexander Carson Houck,
Respondent.

**Filed September 6, 2022
Reversed and remanded
Reyes, Judge**

Hennepin County District Court
File No. 27-CV-22-373

Christopher J. Cadem, Carolyn A. Cadem, Cadem Law Group, PLLC, Fergus Falls,
Minnesota (for appellant)

Alexander Carson Houck, Minnetonka, Minnesota (pro se respondent)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and
Klaphake, Judge.*

SYLLABUS

A district court abuses its discretion by not granting a requested hearing when presented with a harassment-restraining-order (HRO) petition unless the petition is without merit.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

OPINION

REYES, Judge

Following the filing of a marriage-dissolution petition and a separate HRO petition, appellant and respondent entered into a stipulation that, in part, waived appellant's right to bring another HRO petition on the same grounds. Appellant later filed a second HRO petition that included the same allegations, plus new allegations of harassment against respondent. Appellant argues on appeal that the district court erred by dismissing her HRO petition without a hearing after determining that the stipulation barred any prior claims from the first HRO petition and that the issue would be more appropriate in front of the family court hearing the dissolution. Because the plain language of the HRO statute requires a hearing when a petitioner requests a hearing and files a petition that is not meritless, we reverse and remand.

FACTS

Appellant Courtney Ann Houck filed a petition for dissolution of her marriage with respondent Alexander Carson Houck in June 2021.¹ That same day, she also filed an HRO petition. In the HRO petition, Courtney alleged that, since March 2020, Alexander would follow her around their home, sexually assault her, go through her phone to monitor her accounts and texts, and frequently change her passwords.

The district court denied the HRO petition. The district court reasoned that it was “not in a position to make findings of fact” regarding the contact between Courtney and

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

Alexander, because Courtney and Alexander were still married with three children and living together.²

A couple of weeks later, the Houcks entered into a stipulation that was adopted as a family court order regarding several issues, including Courtney's first HRO petition. The family court order noted that the district court denied Courtney's HRO petition. It further stated that Courtney "is enjoined from filing a new Petition making the same allegations [as in the first petition] *absent a new factual basis for an HRO.*" (Emphasis added.)

In January 2022, Courtney filed a second HRO petition, which included the same allegations as the first HRO petition, but with three new allegations. Two of the new allegations were:

In the last two months, he has used Bluetooth to connect to my phone in my van. While connected via Bluetooth, he recorded conversations I was having with other people on the phone without my knowledge or consent.

. . . [O]n June 21, 2021, I had to call the police because Alex was following me around and being erratic. I was afraid for my safety.

The third new allegation was that Alexander violated the family court order when he entered the house that the order directed Courtney would have exclusive use and possession of, and he did so without her permission. Courtney requested a court hearing if the district court denied the request due to a lack of "immediate and present danger of

² Whether the district court clearly erred by not making findings of fact relating to the first HRO petition is not at issue in this appeal.

harassment.”³The district court denied the second HRO petition, and denied a hearing, highlighting that the parties’ stipulation prohibited Courtney from filing a similar HRO. The district court did not determine whether the new allegations had merit or not. The sole paragraph denying the petition and denying a hearing stated:

Petitioner filed for a Harassment Restraining Order against Respondent on June 2, 2021, which was dismissed on June 4, 2021. . . . The current petition is almost identical to the petition filed on June 2, 2021, except for 2 [sic] additional allegations. The allegations on or before June 2, 2021 will not be considered. The stipulation and order provided by Petitioner also reflects the issues included in the June 2, 2021 petition will be addressed in family court. In the current petition, one allegation is that Respondent violated a family court order. Given all of this and that the parties have an ongoing family court case, this matter is better suited for the family court case. The matter should be dismissed, and no hearing will be held.

This appeal follows.

ISSUE

Did the district court abuse its discretion by not holding a hearing as requested on the second HRO petition?

ANALYSIS

The district court abused its discretion by denying a requested hearing without determining whether the second HRO petition had merit.

Courtney argues that the HRO statute requires a hearing and the district court erred by not holding one. We agree.

³ The HRO petition includes a “Notice” section, which states that if the “judicial officer dismisses your case because it has no merit, no hearing will be held.”

As a preliminary matter, Courtney argues that we should review the district court’s denial of a requested hearing on her HRO petition de novo and not as an abuse of discretion. But we review the denial of a hearing for an HRO for an abuse of discretion. *Fiduciary Found., LLC ex rel. Rothfus v. Brown*, 834 N.W.2d 756, 762 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). Generally, a district court abuses its discretion if its findings of fact are unsupported by the record or if it improperly applies the law. *Honke v. Honke*, 960 N.W.2d 261, 265 (Minn. 2021). Also within the abuse-of-discretion standard, we review the district court’s legal conclusions de novo. *Townsend v. State*, 834 N.W.2d 736, 738 (Minn. 2013).

Courtney’s argument regarding the HRO statute presents an issue of statutory interpretation.⁴ Statutory interpretation is a question of law that we review de novo. *State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015). Our objective in statutory interpretation is to “effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2020). The first step in statutory interpretation is to determine whether the statute’s language is ambiguous. *State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). If the legislature’s intent is discernible from the statute’s plain and unambiguous language, “the letter of the law shall

⁴ For purposes of addressing Courtney’s argument to this court, we assume that the district court denied Courtney’s requested hearing based on its construction of the HRO statute, and that the district court’s (purported) construction of the HRO statute is therefore properly before this court for review. *But see Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally address only those questions previously presented to, and considered by, the district court).” We may also exercise our discretion to review the construction of the HRO statute in the interest of justice. *See* Minn. R. Civ. App. 103.04 (allowing courts to address questions in interest of justice).

not be disregarded under the pretext of pursuing the spirit.” *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 60 (Minn. 2014) (quotation omitted).

We turn now to the statute that governs the procedures for issuing an HRO. Minn. Stat. § 609.748 (2020). The legislature defined “harassment” to include a single incident of physical assault or “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). The statute mandates district courts to hold a hearing on the merits of the petition, if requested: “Upon receipt of the petition and a request for a hearing by the petitioner, the court shall order a hearing.” *Id.*, subd. 3(a); *see also id.*, subd. 4(d) (“The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing.”). When used in a statute, the word “shall” is mandatory. Minn. Stat. § 645.44, subd. 16 (2020). The statute, however, also permits dismissal of a petition that lacks merit: “Nothing in this section shall be construed as requiring a hearing on a matter that has no merit.” *Id.*, subd. 3(a).

We conclude that the statute is unambiguous because it is susceptible to only one reasonable interpretation. We therefore apply its plain meaning. We hold that, when presented with an HRO petition, a district court abuses its discretion when it does not hold a requested hearing unless it determines that the petition is without merit.⁵

⁵ Courtney requested this opinion be precedential due to the lack of precedent on this question. *See* Minn. R. Civ. App. P. 128.02, subd. 1(f). We agree that we have only addressed this question in nonprecedential cases. *See, e.g., Albert v. Diaz*, No. A21-0577, 2021 WL 5767860, at *4 (Minn. App. Dec. 6, 2021); *Beland v. Hamre-Rylander*, No. A20-0957, 2021 WL 416735, at *3 (Minn. App. Feb. 8, 2021); *Janecek v. Rosenthal*, No. A16-1885, 2017 WL 2535728, at *2 (Minn. App. June 12, 2017); *Nygard v. Walsh*, No. A15-

Applying the HRO statute to the facts here, Courtney requested that the district court hold a hearing on her second HRO petition. In addition, she alleged that (1) Alexander accessed her phone through Bluetooth technology installed in her van and recorded her phone calls on multiple occasions; (2) on one occasion she had to call the police because Alexander was “following her around and acting erratic;” and (3) Alexander violated the family court order when he came to her house. The district court stated that the violation of the family court order should be addressed by the family court considering the ongoing dissolution, and that, because of the ongoing case, the family court should hear the remaining new claim in the petition. Because a claim of harassment that would include only a single incident of threatening behavior would be, on its face, an invalid petition, Courtney’s HRO petition would have been meritless if she alleged just one non-violent act of harassment. *See* Minn. Stat. § 609.748, subd. 1(a)(1). But not only did the district court not discuss what factual allegation it was referring to when it said there was one remaining additional allegation, it was also mistaken, because there were two allegations in addition to the alleged family court-order violation. And, on its own, the new allegation that Alexander recorded her phone conversations on multiple separate occasions comprises repeated incidents of intrusive or unwanted acts that, if proved, may be sufficient to justify an HRO. *See id.*

1276, 2016 WL 596606, at *2 (Minn. App. Feb. 16, 2016), *rev. denied* (Minn. App. Apr. 27, 2016); *Dwyer v. Molde*, No. A15-0534, 2015 WL 7941286, at *4 (Minn. App. Dec. 7, 2015); *Kreuz v. Pernat*, No. C1-00-1839, 2001 WL 410394, at *2 (Minn. App. Apr. 24, 2001).

Because the district court denied the requested hearing without determining if the petition had merit, it abused its discretion.⁶ We therefore reverse and remand to the district court to determine whether Courtney's allegations have merit, which would require a hearing.

DECISION

Because the plain language of the HRO statute requires a district court to hold a hearing when a petitioner requests one and presents a petition that is not meritless, we reverse and remand.⁷

Reversed and remanded.

⁶ We also note the limitations of moving a harassment claim to a family court. The HRO statute establishes criminal consequences for violating an HRO, but this protection is unavailable in a family court proceeding. Minn. Stat. § 609.748, subd. 6.

⁷ Without additional factual findings, including any necessary credibility determinations, we do not reach the merits of the HRO petition. On remand, the district court has the discretion to determine whether granting an HRO is appropriate.