

*This opinion is nonprecedential except as provided by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
A22-0703**

Catherine E. Jacobson,
Appellant,

vs.

Francesco Parisi,
Respondent.

**Filed February 21, 2023
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-22-86

Joseph P. Tamburino, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for appellant)

John E. Braun, Minneapolis, Minnesota (for respondent)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Two residents of a downtown Minneapolis condominium building quarreled in the lobby bar. One resident used his cellphone to make video-recordings of the other resident. The resident who was being recorded tried to grab the cellphone, which led to physical contact between the two residents. Each resident petitioned the district court for a

harassment restraining order against the other. In this case, the district court denied the petition of the resident who was recorded. We conclude that the district court did not clearly err in its factual findings and, thus, did not err by denying the petition. Therefore, we affirm.

FACTS

Catherine E. Jacobson and Francesco Parisi reside in separate condominium units in the downtown Minneapolis building known as the Hotel Ivy. On the evening of September 28, 2021, both were in the lobby bar. The following factual summary is derived from witness testimony and from video-recordings that were introduced into evidence as exhibits.

Parisi arrived at the bar at approximately 10:40 p.m. with a female friend. Jacobson had been at the bar since approximately 7:30 or 8:00 p.m. and was socializing with two other persons at the bar when Parisi arrived. Jacobson repeatedly said aloud, in a manner that could be heard by others, that Parisi was a rapist and should not be allowed to live in the building. Jacobson later testified that she had read two news articles about a woman's accusation that Parisi had raped her. Parisi later testified that he previously had been accused of rape, that the accusation was false, and that he had won a defamation lawsuit against the accuser.

While Jacobson continued talking, Parisi used his cellphone to make five video-recordings, with a combined total length of approximately 12 minutes. As Jacobson moved around the bar area, Parisi followed her and continued to record her. Parisi's act of

recording Jacobson did not deter her from continuing to talk about Parisi, and Parisi sometimes responded to her comments, which tended to extend their interactions.

At one point in time, Jacobson walked toward Parisi, which caused Parisi to walk backwards while continuing to record Jacobson. Jacobson attempted to grab Parisi's cellphone, and Parisi held out his left arm as if to block Jacobson's reaching or grabbing motion. On two occasions, Parisi's left hand made contact with Jacobson's body. On the first occasion, Parisi's left hand appears to have made contact with Jacobson's face, though the video-recording does not capture the moment of contact. On the second occasion, Parisi's left hand made contact with Jacobson's upper chest, possibly including part of her left breast. Jacobson testified that Parisi touched her left breast and slapped her face. Parisi testified that his hand came into contact with Jacobson while he was protecting himself and his cellphone.

Jacobson called police and reported that Parisi had slapped her in the face. Parisi continued to record Jacobson during her telephone call with police. Jacobson went upstairs to her condominium unit but returned to the lobby when police officers arrived. Parisi recorded Jacobson's conversation with the officers. The two resumed their argument until police officers told them to separate.

The next day, September 29, 2021, Parisi petitioned the Hennepin County District Court for a harassment restraining order (HRO) against Jacobson. Approximately three months later, on December 23, 2021, Jacobson petitioned the district court for an HRO against Parisi and requested a hearing. Jacobson alleged that Parisi physically or sexually assaulted her, frightened her with threatening behavior, and video-recorded her after she

told him to stop. She attached a statement to her petition in which she stated that Parisi slapped her face and “groped and cupped [her] breast and shoved [her] away.”

On January 4, 2022, the district court filed an order denying Jacobson’s request for an *ex parte* HRO on the ground that there was “not an immediate and present danger of harassment to justify temporary relief.” The district court later conducted a consolidated hearing on both parties’ petitions. Parisi introduced the five video-recordings, which both parties referenced and played for the court during witness testimony. Parisi testified that Jacobson attempted to take away his cellphone and, in doing so, caused his cellphone to hit his face. He testified that he tried to defend himself by putting his “hand in between her hand and [his] face.” He denied assaulting Jacobson. He testified that his hand contacted Jacobson’s body when he tried “to push her away from” him. Jacobson testified that she tried to grab Parisi’s cellphone so that he would stop recording her. She testified further that Parisi slapped her face and grabbed and squeezed her left breast.

In April 2022, the district court filed an order with findings of fact and conclusions of law. Among the findings of fact is the following:

Petitioner attempted to take the cellphone from [Respondent] on multiple occasions but failed. During those attempts, Respondent raised his hand to shield himself from Petitioner. In the process, his hand made contact with Petitioner’s body and face. Petitioner testified that Respondent took hold of her breast later in the event and slapped her.

In its conclusions of law, the district court referred to caselaw stating that, to obtain an HRO, a petitioner must prove, first, objectively unreasonable conduct or intent on the part of the harasser and, second, an objectively reasonable belief on the part of the person

subject to harassing conduct. *See Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006); *see also Peterson v. Johnson*, 755 N.W.2d 758, 764 (Minn. App. 2008); *Kush v. Matthison*, 683 N.W.2d 841, 845 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). The district court then applied that caselaw to the facts as follows:

Petitioner has the burden to prove by a preponderance of the evidence that the Respondent committed acts of harassment, as defined by Minnesota law. The Court finds that Petitioner has not met her burden. . . . The confrontation began when Petitioner accused Respondent of being a rapist. This point was made several times over an extended period of time. Respondent recorded the event utilizing his cell phone camera. *Petitioner made several attempts to stop Respondent by taking his phone. With each attempt, Respondent deployed his free hand in an effort to shield himself. The parties were in close quarters. Though Petitioner argues Respondent slapped her on at least one occasion, and grabbed her breast on another, the Court is unable to identify any conduct by Respondent that qualifies as objectively unreasonable. Throughout the incident, Respondent actively defends himself against Petitioner's attempts to relieve him of his cell phone. Any contact initiated by Respondent was incidental.* That said, there is also the matter of Respondent's decision to record the event even after there was a noted de-escalation. This was certainly inappropriate, especially after Petitioner asked him to stop. While the Court finds Respondent's conduct to be antagonizing and inappropriate, such does not rise to the level of harassment.

Respondent's conduct toward Petitioner was not objectively unreasonable. There are, therefore, no reasonable grounds to believe that Respondent has engaged in harassment within the meaning of Minnesota Statutes section 609.748.

(Emphasis added). Accordingly, the district court denied Jacobson's petition. Jacobson appeals.

DECISION

Jacobson argues that the district court erred by denying her petition for an HRO. Specifically, Jacobson argues that the district court clearly erred by finding that Parisi's conduct was objectively reasonable and abused its discretion by not issuing an HRO in light of evidence that Parisi slapped her face and grabbed and squeezed her breast.

A district court may grant an HRO if it finds that there are "reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2022). A person may engage in harassment in multiple ways. *See id.*, subd. 1(a)(1). For example, harassment may consist of "a single incident of physical or sexual assault." *Id.* In this context, physical assault means "the intentional infliction of or attempt to inflict bodily harm upon another." *Peterson*, 755 N.W.2d at 762 (quoting Minn. Stat. § 609.02, subd. 10(2) (2006)). Also, harassment may occur by "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). In considering whether the HRO statute's language concerning "repeated incidents of intrusive or unwanted acts, words, or gestures" is unconstitutionally overbroad, this court has stated that a finding of harassment "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*, 708 N.W.2d at 566-67.

In this case, the district court did not expressly state whether Jacobson proved that Parisi's conduct satisfies the definition of harassment and, if so, which part of the statutory

definition is implicated. It appears that the district court assumed without deciding that Parisi engaged in an assault. In any event, it is clear that the district court disposed of Jacobson's petition by finding that she did not prove that Parisi engaged in objectively unreasonable conduct. *See id.* Jacobson does not challenge the premise that she was required to prove objectively unreasonable conduct. Accordingly, for purposes of this nonprecedential opinion, we assume without deciding that proof of "objectively unreasonable conduct or intent" is required if an incident of alleged harassment takes the form of an alleged physical or sexual assault.

Jacobson's sole argument is that the district court erred by finding that Parisi's conduct was not objectively unreasonable. Jacobson challenges a finding of fact, which requires this court to apply a clear-error standard of review. *See Kush*, 683 N.W.2d at 843-44. A finding of fact is clearly erroneous if it is either "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 274 (Minn. 2016) (quotation omitted). The mere fact that "the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

The district court's finding that Parisi's conduct was not objectively unreasonable is based on the district court's underlying findings that, when Parisi made contact with Jacobson, he was trying to defend himself against Jacobson's attempts to grab his cellphone and that any physical contact caused by Parisi was merely incidental to his efforts to resist Jacobson's reaching or grabbing motion. Those findings are supported by the evidence.

Parisi testified that when he raised his arm, he intended only to protect his cellphone and himself. The district court was permitted to find his testimony credible and to rely on it when making findings of facts. *See Peterson*, 755 N.W.2d at 763 (noting that “[c]redibility determinations are the province of the trier of fact”). In addition, Parisi introduced a video-recording that captured the critical moments. Having carefully and repeatedly viewed that video-recording as well as all of the video-recordings, we can confirm that the video evidence supports the district court’s findings. The video evidence shows that Parisi was backing away from Jacobson when both contacts occurred. The video evidence shows that Jacobson reached for Parisi’s cellphone more than once and that Parisi briefly raised his left arm to prevent Jacobson from taking his cellphone. The video evidence indicates that Parisi did not intend to contact Jacobson’s body in any particular place, such as her face or her chest or breast, but intended only to block Jacobson’s reaching motion.

Given the predicate facts, the district court did not clearly err by finding that Parisi’s conduct was not objectively unreasonable. In light of that finding, the district court did not abuse its discretion by not issuing an HRO because Jacobson did not prove that Parisi engaged in harassment. Thus, the district court did not err by denying Jacobson’s petition for a harassment restraining order.

Affirmed.