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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1396**

Melanie Jane Anderson and obo minor children,
Respondent,

vs.

Nicholas Anton Banyai,
Appellant.

**Filed May 22, 2023
Affirmed
Larson, Judge**

Sherburne County District Court
File No. 71-CV-22-867

Hanna M. Mumm, Two Rivers Law, P.A., Otsego, Minnesota (for respondent)

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(for appellant)

Considered and decided by Reyes, Presiding Judge; Reilly, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Nicholas Anton Banyai argues the district court erred when it granted a harassment restraining order (HRO) for his daughter, H.B. Because sufficient evidence supports the district court's decision that H.B. is a "victim of harassment," we affirm.

FACTS

Banyai and respondent Melanie Jane Anderson¹ began their “[v]ery on and off” relationship in 2017. Banyai and Anderson share one biological daughter, H.B., who was born in 2019.² Anderson also has two sons from a previous relationship (the sons).³

Throughout their relationship, Banyai and Anderson often lived together at Banyai’s residence. Between 2017 and April 2022, Banyai and Anderson separated “at least 15 times.” Whenever the two separated, Anderson would leave the residence. Anderson testified that “[n]inety percent of the time” Banyai decided she needed to leave. Every time Banyai would “kick [Anderson] out of the [residence],” Anderson would take the children with her. Since H.B. was born, Banyai removed Anderson, and by extension H.B., from the residence at least twice.

Anderson also described several occasions when Banyai locked her out of the residence and forced her to sleep outside. During one occasion, Banyai dragged Anderson off their bed and outside by her feet. Anderson loudly protested for Banyai to stop as he dragged her. Banyai then locked the door and did not allow Anderson back into the house

¹ Anderson did not file a brief in this appeal, and we ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03, which provides that if a respondent fails to file a brief, then the case shall be determined on its merits.

² The record does not clarify Banyai’s current parental rights to H.B. In June 2022, Banyai filed a petition to establish custody and parenting time, but this petition did not fully describe Banyai’s current parental rights, only what Banyai asserts in support of his petition.

³ Anderson testified she has “50 percent custody” of the sons.

until the next morning.⁴ H.B. remained inside the residence without her mother and may have observed this incident.

In mid-2019, Anderson pursued moving into a townhome without Banyai. One day while Banyai was working, Anderson took H.B. to submit townhome lease applications. Anderson left her phone at the residence because she knew Banyai had previously used it to track her movements. When Anderson returned to the residence, she discovered text messages from Banyai accusing her of cheating and saying she had “40 minutes to get out of [his] house.” Anderson packed what she could in the allotted time and left the residence with the children. Banyai later sent Anderson a picture showing him burning Anderson’s remaining belongings, including the sons’ bunk bed. Banyai also informed Anderson that he installed a tracking device in her vehicle to monitor her movements. Anderson located the tracking device and reported it to the police.⁵

Anderson eventually rented a townhome. Anderson did not disclose this address to Banyai, yet he made multiple uninvited visits. According to Anderson, “almost every night [Banyai] would circle the parking lot” and, on at least one occasion, he sat near her door for at least an hour and asked her to let him into the townhome. Anderson testified Banyai’s uninvited visits made her feel “[v]ery unprotected.”⁶ Yet, around October 2019, Anderson and the children moved back into the residence with Banyai.

⁴ During similar occasions, Banyai forced Anderson to sleep in the uninsulated porch.

⁵ Banyai pleaded guilty to a petty-misdemeanor charge of tampering with a motor vehicle for installing the tracking device.

⁶ Anderson testified that Banyai has access to firearms despite being a felon. Anderson stated Banyai’s access to guns, previous convictions, and continued alcohol use made her concerned for her and the children’s safety. Anderson expressed that Banyai has “not ever

In April 2022, Anderson and Banyai separated for the final time. Banyai told Anderson she needed to move out and called the sons' paternal grandmother (grandmother) to retrieve Anderson and H.B. Anderson and the children subsequently lived with grandmother for about 30 days. During this period, Banyai called the police at least twice to perform welfare checks on H.B.⁷ Additionally, just after Anderson moved from grandmother's residence, an unknown woman visited grandmother's residence asking for Anderson. Grandmother and Anderson both found this visit concerning, and Anderson suspected this woman was Banyai's new girlfriend.

Following their April 2022 separation, Anderson brought H.B. to see Banyai several times, but with decreasing frequency. On one occasion, Anderson brought H.B. to Banyai's residence to retrieve Anderson's remaining belongings, but found that Banyai had destroyed them. Anderson then decided to only let Banyai see H.B. in public places because Anderson "felt safer that way . . . kn[owing] that [Banyai] wasn't going to take [H.B.] and not allow for [Anderson] to have [H.B.]." However, Anderson testified these public meetings were "never about [H.B.]" and instead about Banyai "wanting [Anderson] back." Anderson stated she felt bad for H.B. because there were "times where [H.B.] would leave crying because there was always a fight."

Due to these concerns, in late April 2022, Anderson told Banyai that he could not see H.B. unless a court ordered Banyai parenting time. In June 2022, Banyai asked

really car[ed]" about the law and that he has always "tr[ied] to fit through the loopholes" in a way that is "scary for anybody."

⁷ Grandmother testified that Banyai lacked any basis to believe Anderson and grandmother were not properly caring for H.B.

Anderson if he could see H.B. on Father's Day. Despite Anderson explicitly declining, Banyai and his uncle made an uninvited visit to Anderson's residence. Anderson allowed Banyai to spend time with H.B. in the front entryway for a short time.

On June 27, 2022, Banyai served Anderson with a petition to establish custody and parenting time in relation to H.B. In early to mid-July, Banyai sent several text messages to Anderson, which were later admitted as an exhibit. In these text messages, Banyai insistently asked to see H.B., and Anderson continually declined. At several points, Banyai made threatening statements like, "Where is my daughter living you can answer me or I can take care of it your call I'm not playing the childish games anymore." During the exchange, Anderson repeatedly asked Banyai to stop contacting her:

ANDERSON:	How many times do I need to ask you to stop.
BANYAI:	As many times as it takes me to see my daughter
ANDERSON:	No.
ANDERSON:	I need you to stop messaging me. Meaning, family, or "friends" . . . all of it. It needs to stop.
BANYAI:	Since we have a daughter together that's not going to happen.
ANDERSON:	Leave me alone.
BANYAI:	Let me see my daughter
ANDERSON:	No. Allow for the court to make their decision and leave me alone until then.
BANYAI:	No thanks I will continue to ask to see my daughter
BANYAI:	You have a problem with that call the cops

Anderson testified that Banyai's continual messaging "has literally taken [her] away from so many things that [she] could be focused on in life" and she felt like she was "drowning."

On July 19, 2022,⁸ Anderson filed a petition for an HRO on behalf of herself, H.B., and the sons.⁹ The same day, the district court issued an ex parte HRO.

In late August 2022, the district court held a two-day contested evidentiary hearing to address Anderson's HRO petition. Anderson testified consistent with the facts described above. Anderson also called several witnesses who testified, as relevant here, that Banyai's behavior impacted H.B. These witnesses noted that H.B. displayed abnormally strong reactions to anyone fighting or raising their voice. Grandmother testified that H.B. "d[oes not] want anybody to fight at all" and that H.B. "would get so upset" in a way grandmother had never "witnessed from a small child like that unless they had witnessed it at a different level." Anderson and a close friend both testified that H.B. has made statements like "No, da-da" or "Gaggy"¹⁰ whenever people raise their voice.

After Anderson's final witness, Banyai moved for directed verdict in relation to H.B. During argument, Banyai stipulated to an HRO in relation to Anderson and the sons. The district court denied Banyai's motion for directed verdict in relation to H.B.

After hearing closing arguments, the district court ruled from the bench and granted Anderson's petition for an HRO for herself, H.B., and the sons. In granting the HRO for H.B., the district court relied on: (1) Banyai's uninvited Father's Day visit; (2) Banyai removing Anderson from the residence "with no concern apparently for where [Anderson

⁸ Anderson testified that before Banyai served her the petition to establish custody and parenting time, she had been working with a nonprofit to draft this petition for an HRO.

⁹ After Anderson and Banyai separated in April 2022, the sons disclosed that Banyai had engaged in "[m]ental, emotional, [and] physical" abuse against them.

¹⁰ "Gaggy" is a name that H.B. calls Banyai.

and H.B.] would end up”; (3) Banyai destroying items that belonged to Anderson and the children; and (4) the effect Banyai’s conduct during disputes with Anderson have had on H.B. In summarizing its decision, the district court addressed Banyai as follows:

It is fortunate that [H.B.] doesn’t seem to appreciate the danger to her safety or security, but the Court does find based on your actions that you have committed repeated incidents, conduct, gestures that have had a substantial adverse effect on [H.B.]’s security and safety, if for no other reason, by kicking her out of the house with no place – or at least no care for where she and her mother would end up.

The district court noted the HRO would contain language allowing the family court case or child protective services to order contact between H.B. and Banyai.

The district court issued a written order reflecting its findings and conclusions. In the written order, the district court highlighted that Banyai: (1) dragged Anderson outside while H.B. was in the residence; (2) made multiple uninvited visits to Anderson’s townhome where H.B. lived; (3) showed up at Anderson’s residence after being told he could not see H.B.; (4) destroyed Anderson and the children’s property; and (5) removed Anderson and H.B. from the residence multiple times “oftentimes giving Ms. Anderson only minutes to retrieve her and [H.B.’s] belongings, without any concern for where [H.B.] would live or whether she had the necessary items for her care or for her wellbeing.” The district court’s written order noted the HRO could be modified by an order in the pending family court case and that the “parties may have contact for the purposes of participating in mediation in the family court matter.”

Banyai appealed the HRO decision as it relates to H.B.

DECISION

Banyai challenges the district court's HRO preventing him from having contact with H.B. We review the issuance of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). "A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record." *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quotation omitted). We review de novo whether the district court's factual findings satisfy the statutory definition of harassment. *Peterson*, 755 N.W.2d at 761-63. We review the district court's factual findings for clear error giving due regard "to the district court's opportunity to judge the credibility of witnesses." *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004); *see also Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99-100 (Minn. App. 2009) (considering implicit credibility findings on appeal from a district court's grant of an order for protection). We "will reverse the issuance of a restraining order if it is not supported by sufficient evidence." *Kush*, 683 N.W.2d at 844.

"The parent . . . of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor. Minn. Stat. § 609.748, subd. 2(b) (2022) (emphasis added). A district court may issue an HRO if "the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2022). "Harassment" means, in relevant part, "*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, regardless of the relationship between the actor and the intended target.” *Id.*, subd. 1(a)(1) (2022) (emphasis added); *see also Kush*, 683 N.W.2d at 844 (noting that two or more instances of harassing conduct constitute “repeated incidents”). The harassment statute requires the petitioner to establish: (1) “objectively unreasonable conduct or intent on the part of the harasser” and (2) “an objectively reasonable belief on the part of the person subject to harassing conduct.” *Peterson*, 755 N.W.2d at 764 (quoting *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006)); *see also Kush*, 683 N.W.2d at 845 (establishing that objectively unreasonable conduct “goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect on another's safety, security[,] or privacy”).

Banyai contends the district court failed to make specific findings regarding H.B. because the record lacks any evidence that H.B. was aware of the conduct or that the conduct affected H.B. This argument is unpersuasive. Although the district court referenced Banyai’s behavior towards others, the district court’s findings are focused on events that affected H.B. For example, the district court found Banyai would remove Anderson from the residence “with the understanding that [H.B.] would go [with Anderson], wherever that may be, and with no concern apparently for where they would end up.” Similarly, the district court noted Banyai’s arguments with Anderson in front of H.B. have had “an impact on [H.B.]” Regarding Banyai’s conduct toward Anderson, and particularly his decision to drag Anderson outside, we have noted that harassing behavior “often affects individuals other than the directly intended victim.” *Kush*, 683 N.W.2d at

845 (noting that “[i]n many cases . . . children are present and may either witness [harassing] behavior first-hand or develop a sense of fear given the substantial effects the harassing conduct has on the adults around them”). Here, the district court noted “[i]t is fortunate that [H.B.] doesn’t seem to appreciate the danger to her safety or security,” yet Banyai’s actions “had a substantial adverse effect on [H.B.]’s security and safety.” Even assuming H.B.—as a small child—cannot appreciate the threat to her safety and security, the record amply supports the district court’s finding that Banyai’s actions did, in fact, adversely affect her safety and security. *See id.* at 845-46.

Banyai also contends that because he did not intend to direct his harassing conduct at H.B. she is not a “victim of harassment.” This argument conflicts with the statute’s plain language and the district court’s findings. Section 609.748, subdivision 1(a)(1), defines “[h]arassment,” 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.” (Emphasis added.) The conjunction “or” signifies alternative paths for an actor to engage in harassment. *See Goldman v. Greenwood*, 748 N.W.2d 279, 283 (Minn. 2008) (stating that courts “normally interpret the conjunction ‘or’ as disjunctive rather than conjunctive”). Therefore, the actor may “intend” for their actions to have “a substantial adverse effect on the safety, security, or privacy of another[.]” or their actions may “have” that effect regardless of the actor’s intent. Here, the district court found that Banyai “committed repeated incidents, conduct, gestures that *have had* a substantial adverse effect on [H.B.]’s security and safety.” (Emphasis added.) The district court’s findings focused on the actual effect Banyai’s

actions had on H.B., not whether he intended to direct his actions toward H.B. Thus, Banyai's claim that he lacked "intent" to harass H.B. is irrelevant.

Finally, Banyai asserts his conduct, as it relates to H.B., is not "objectively unreasonable." Banyai contends he did not act unreasonably when he argued with Anderson in front of H.B. or when he tried to see his daughter after Anderson restricted his parenting time. Even assuming Banyai accurately characterized those events, the record shows Banyai removed Anderson, and by extension H.B., from the residence multiple times. The district court found Banyai "oftentimes g[ave] Ms. Anderson only minutes to retrieve her and [H.B.'s] belongings, without any concern for where [H.B.] would live or whether she had the necessary items for her care or for her wellbeing." The district court determined that the HRO could be granted "if for no other reason" than for Banyai removing Anderson and H.B. from the residence. We conclude the district court did not abuse its discretion when it determined this behavior was "objectively unreasonable."

The district court made harassment findings specific to H.B., which the record supports. *See Kush*, 683 N.W.2d at 843-44. These findings show Banyai engaged in "repeated incidents of intrusive or unwanted acts, words, or gestures" that had "a substantial adverse effect" on H.B.'s "safety" and "security." Minn. Stat. § 609.748, subd. 1(a)(1). For these reasons, the district court did not abuse its discretion when it granted an HRO preventing Banyai from having contact with H.B.

Affirmed.