

*This opinion is nonprecedential except as provided by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
A22-1492**

Jamie Marie Cambronne,
and On Behalf of Minor Children,
Respondent,

vs.

Jake Chapp,
Appellant.

**Filed May 15, 2023
Affirmed
Hooten, Judge*
Concurring specially, Johnson, Judge**

Benton County District Court
File No. 05-CV-22-1249

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Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Hooten,
Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

On two grounds appellant challenges the district court's grant of a harassment restraining order (HRO) against him: (1) his actions did not constitute harassment, and

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

(2) the HRO violates his First Amendment right to free speech. Because the record supports the district court's finding of harassment and the HRO does not violate the First Amendment, we affirm.

FACTS

Appellant Jake Chapp lives across the street from the residence of respondent Jamie Cambronne. On June 1, 2022, Cambronne's son pleaded guilty to a criminal-sexual-conduct charge involving Chapp's daughter. According to Cambronne, her son has not lived at the family's residence since February 2022.

On July 5, 2022, Chapp put up a sign, visible from the road and aimed at Cambronne's property, which stated, "How would you feel if your child was RAPED by the neighbor and his parents blame you for his conviction?" Chapp has two driveways, one to his residence and one which leads to his barn/business. The sign was located on or around Chapp's second driveway, which was located closer to Cambronne's driveway.

Cambronne removed the sign and gave it to the police. That evening, Chapp put up a replacement sign which had identical or similar wording to the original sign. On July 13, Chapp put up a second sign next to the first sign, which stated, "Honk if you agree: Rape is wrong." These signs both faced Cambronne's residence and were illuminated at night.

On July 18, Cambronne petitioned for an HRO on behalf of herself and her minor children against Chapp. Cambronne's petition claimed that since July 5, Chapp has "harassed [her] family by means of slandering signs day and night, stopping traffic and encouraging horn blowing past [Cambronne's] property," as well as "yelling, watching, drive-bys, and shooting guns." The petition included photographs of the signs. The district

court issued an ex parte order granting Cambronne's HRO petition and prohibiting Chapp from having contact with Cambronne or being on her property.

On July 27, Chapp requested a hearing on Cambronne's HRO petition. In his request for a hearing, Chapp denied the allegations in Cambronne's petition and asserted that he was exercising his First Amendment rights. Chapp also claimed Cambronne was giving him the middle finger, "spray[ing] rocks and debris" on his driveway and taking photographs of his "wife and family."

On or about August 7, Chapp filed his own petition for an HRO, and on August 8, the district court issued an ex parte HRO. The two HRO matters were consolidated for a hearing held on August 23. At the hearing, the district court heard testimony from Cambronne, Cambronne's husband, Chapp, and Chapp's wife.

Cambronne stated that Chapp's signs prompted people to honk "[s]everal times every day" as they went by her home. Cambronne testified that Chapp's actions have "created a lot of emotional damage, some anxiety, stress." She also stated that Chapp took his signs down when served with the HRO papers and as a result, it has been "very peaceful." Cambronne's husband testified that while he was not part of the HRO petition, an HRO was needed to prevent ongoing issues with Chapp.

Chapp testified that he placed the signs on his property "[f]or the awareness." Chapp stated he "was concerned and irritated . . . that no one knew what took place between [their] families" and "thought it was important that people were safe." He admitted that after Cambronne took his sign down on July 5, he "said some things that maybe were not favorable" but denied driving by Cambronne's home to intimidate her or threatening her

with a firearm. Chapp's wife testified that she heard people honking their horn, but people have "been doing that for years" because "it's [common practice] in the country."

The district court determined that Chapp's signs "were harassing in nature" and that "it's clear from the wording and the placement of the signs that the intent was at least in part to harass the Cambronnnes" The district court further determined that the signs were "designed to be visible from the roadway" and "more often than not visible from . . . Cambronne's home" such that "there was an intent [] to cause harassment . . . by encouraging others to honk the horns and by making the signs visible to" Cambronne. The district court acknowledged that Chapp had a "First Amendment right to free speech" but concluded that "the tenor of this speech here was specifically designed . . . with an intent to harass." The district court "left in place" the HRO previously issued against Chapp.¹

After the August 23 hearing, the district court issued a written order granting Cambronne's HRO. The district court found "reasonable grounds to believe that [Chapp] engaged in harassment" based on the following: Chapp "displayed signs visible from [the] roadway and [Cambronne's] home encouraging passersby to honk their vehicle horns. These signs were lighted and visible at night." The district court granted the HRO for two years.

Chapp appeals.

¹ The district court determined that Cambronne's "rude gestures" and "photographing the [Chapp] family on repeated occasions" constituted harassment; thus, the district court also "left in place" Chapp's HRO against Cambronne. Cambronne did not appeal this decision.

DECISION

I. The district court did not abuse its discretion by determining Chapp's conduct constituted harassment.

“We review a district court’s decision whether 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). “[D]ue regard is given 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) (citing Minn. R. Civ. P. 52.01), *rev. denied* (Minn. Sept. 29, 2004).

A district court may grant an HRO if it “finds at the hearing that there are reasonable grounds to believe that [a person] has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2022). “Harassment” 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.” *Id.*, subd. 1(a)(1) (2022). Thus, the HRO statute “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 that which “goes beyond an acceptable expression of outrage and civilized conduct.” *Kush*, 683 N.W.2d at 846.

Here, the district court determined that Chapp's signs "were harassing" and that Chapp intended to harass Cambronne by "invading the safety, security or privacy of [Cambronne] by encouraging others to honk the horns and by making the signs visible to [Cambronne]"; in support of its determination, the district court cited "the wording and placement of the signs."

Chapp argues that his conduct was not harassment for two reasons. First, Chapp contends that "the placing of a sign constitutes an acceptable expression of outrage and civilized conduct." We disagree. Based upon the district court's conclusion that Chapp harassed Cambronne, the district court implicitly found that Chapp's placement of the signs was objectively unreasonable conduct. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (determining that the district court made implicit credibility findings in the context of an order for protection); *Dunham*, 708 N.W.2d at 567 (concluding the HRO statute requires objectively unreasonable conduct). The record supports the district court's determination.

At the HRO hearing, Chapp admitted that the signs were "in view of [Cambronne's] home," that he selected that location, that he illuminated the signs to be seen at night, and that one of the signs asked drivers to honk their horns. Chapp's conduct was unwelcome by Cambronne who "removed" Chapp's initial sign and "called the police" the day Chapp posted the sign. The district court also discredited Chapp's testimony that "claimed [the signs] to be educational or informative." We defer to such credibility determinations by the district court. *See Kush*, 683 N.W.2d at 843-44. Thus, the district court did not clearly err in finding Chapp's conduct objectively unreasonable.

Second, Chapp argues that the signs did not affect the safety, security, or privacy of Cambronne. The district court determined, however, that Chapp had “an *intent* . . . to cause harassment by invading the safety, security or privacy of [Cambronne].” (emphasis added). Because the HRO statute is disjunctive, actions may constitute harassment if they either “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); *see also Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 385 (Minn. 1999) (stating appellate courts “have generally read ‘or’ to be disjunctive”).

The district court made a finding regarding Chapp’s intent to affect the safety, security, or privacy of Cambronne and thus, an actual adverse effect is not required. Chapp did not brief the issue of intent and as such, we need not consider it. *See State Dep’t of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 380 (Minn. 1997) (noting that appellate courts decline to reach inadequately briefed issues). But in the interest of completeness, we determine that because the record supports the district court’s finding that Chapp’s conduct was objectively unreasonable, as detailed above, the district court did not err in finding that Chapp intended his conduct to have a substantial adverse effect on Cambronne. *See Davidson v. Webb*, 535 N.W.2d 822, 825 (Minn. App. 1995) (concluding that defendant’s harassing actions alone “constitute reasonable grounds for the district court to believe that [defendant] intended to adversely affect [HRO petitioner’s] safety, security, or privacy”).

In sum, because “there are reasonable grounds to believe” that Chapp has “engaged in harassment,” the district court’s issuance of the HRO was not an abuse of discretion. Minn. Stat. § 609.748, subd. 5(a)(3).

II. The HRO does not violate Chapp’s First Amendment rights.

Appellate courts “review as-applied challenges to the constitutionality of statutes de novo.” *Newstrand v. Arend*, 869 N.W.2d 681, 687 (Minn. App. 2015), *rev. denied* (Minn. Dec. 15, 2015). Both the United States and Minnesota Constitutions guarantee the right to free speech. U.S. Const. amend. I; Minn. Const. art. I, § 3. Prior restraints on speech, which “forbid certain communications before they occur, usually through the issuance of an administrative or judicial order,” are generally “viewed unfavorably under the First Amendment.” *Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014).

“But the state may regulate certain categories of words or conduct without substantially infringing on speech or expressive conduct protected by the First Amendment.” *Dunham*, 708 N.W.2d at 565; *see also Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981) (“[T]he First Amendment does not guarantee the right to communicate one’s view at all times and places or in any manner that may be desired.”). This court has upheld the constitutionality of Minnesota’s HRO statute because it restricts three categories of unprotected speech: (1) “fighting words”; (2) “true threats”; and (3) “substantial invasions of one’s privacy.” *Dunham*, 708 N.W.2d at 566.

The district court determined that while Chapp has “a First Amendment right to free speech . . . the tenor of [Chapp’s] speech here was specifically designed . . . with an intent

to harass.” The district court issued an HRO prohibiting Chapp from harassing Cambronne, having direct or indirect contact with Cambronne and her minor children, and being on Cambronne’s property. The HRO does not provide for specific restrictions on Chapp’s use of signage or clearly identify the aspects of Chapp’s signs that constituted harassment; it states only that “[t]here are reasonable grounds to believe [Chapp] has engaged in harassment” because he “displayed signs visible from roadway and [Cambronne’s] home encouraging passersby to honk their vehicle horns” that were “lighted and visible at night.”

Chapp makes two First-Amendment challenges to the HRO. First, Chapp contends that his signs “do not fall into any of the categories of unprotected speech.” But as detailed above, the record supports the district court’s determination that Chapp intended his signs to have a substantial adverse effect on Cambronne’s safety, security, or privacy. Because the signs constitute harassment under the HRO statute, they are unprotected speech. *See id.* (“The state may . . . regulate conduct that is invasive of the privacy of another.”).

Second, Chapp claims that the HRO is an unconstitutional prior restraint because it prohibits him from “communicat[ing] his viewpoints regarding rape through signage on his property,” and publishing “via a sign . . . any content referring to the events suffered by [his] daughter regardless of whether [the sign] was harassing.” We disagree. The HRO does not necessarily prohibit Chapp from expressing his views on rape or posting signs on his property; it only prohibits Chapp from harassing Cambronne.

This court may use caselaw construing the statute governing orders for protection (OFPs) when interpreting the HRO statute. *See Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995) (stating that caselaw concerning the Minnesota Domestic Abuse Act

may apply in interpreting the HRO statute). In *Rew*, the supreme court upheld the constitutionality of an OFP that restricted appellant's contact with his ex-wife and his minor children. 845 N.W.2d at 776-77. The supreme court concluded that the OFP was not a prior restraint on speech because appellant was "not prevented from expressing his message in any one of several different ways, he just cannot express his views to [his ex-wife] or the minor children." *Id.* at 777 (quotation and citation omitted).

Here, the district court found that Chapp's signs constituted harassment but like in *Rew*, the HRO does not prevent Chapp from expressing his views in other ways not designed to have a substantial adverse effect upon the privacy of Cambronne and her children in their home. The HRO does not restrict the content of Chapp's speech, but only restricts Chapp from engaging in harassment of Cambronne. Under these unique circumstances, we conclude that the HRO is not an unconstitutional prior restraint on speech.

Affirmed.

JOHNSON, Judge (concurring specially)

I concur in the court's decision to affirm the district court's issuance of a harassment restraining order (HRO). I write separately to explain my reasons for doing so.

As an initial matter, it is appropriate to acknowledge that appellant's First Amendment argument has some support in caselaw. The use of signs on one's own property is a well-recognized form of protected speech, which may convey "a message quite distinct from placing the same sign someplace else, or conveying the same text or picture by other means." *City of Ladue v. Gilleo*, 512 U.S. 43, 56 (1994). In addition, speech on matters of public concern (which includes the prosecution of a criminal offense) "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *See Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quotation omitted). Nonetheless, the state has an interest "in protecting the well-being, tranquility, and privacy of the home," which means that the First Amendment does not give a speaker the "right to force speech into the home of an unwilling listener." *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988) (quotation omitted).

Assuming that the HRO is not an unconstitutional prior restraint, and that the HRO is content-neutral rather than content-based, the ultimate question is "whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994). Appellant has not argued that the district court should have crafted a narrower HRO or that this court should narrow it. Appellant also has not asked this court to remand the case to the district court. *See, e.g., Oberholzer v. Galapo*, 274 A.3d 738, 751-68 (Pa.

Super. Ct. 2022) (vacating injunction prohibiting party from displaying signs toward neighbor's property and remanding to trial court for *Madsen* analysis), *rev. granted*, 286 A.3d 1232 (Pa. Oct. 24, 2022). Given an all-or-nothing choice, this court must affirm the issuance of the HRO, which forbids some speech that is beyond First Amendment protection.

In part II, the opinion of the court rejects the first part of appellant's First Amendment argument by reasoning that, because appellant's signs constitute harassment under the HRO statute, they are not protected by the First Amendment. *See supra* at 9. I would not assume that speech that satisfies the statutory requirements for an HRO necessarily is unprotected by the First Amendment. We have held that the HRO statute is not overbroad and, thus, not facially unconstitutional. *Dunham v. Roer*, 708 N.W.2d 552, 564-67 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006). But the overbreadth doctrine voids a statute "only if the degree of overbreadth is substantial." *Id.* at 565 (quotation omitted); *see also State v. Jorgenson*, 946 N.W.2d 596, 601-05 (Minn. 2020). Accordingly, *Dunham* does not foreclose the possibility that, in a particular case, an HRO issued pursuant to the statute might violate First Amendment rights.

I also note that *Dunham* may be inconsistent with a subsequent supreme court opinion. In *Dunham*, we stated that the HRO statute may regulate not only fighting words and true threats but also "conduct that is invasive of the privacy of another." 708 N.W.2d at 565 (citing *Gormley v. Director, Connecticut State Dep't of Probation*, 632 F.2d 938, 942 (2d Cir. 1980), *cert. denied*, 449 U.S. 1023 (1980)). We held that the HRO statute does not violate the First Amendment to the extent that it regulates "speech or conduct that

is intended to have a substantial adverse effect, *i.e.*, is in violation of one’s right to privacy.” *Id.* at 566 (citing *Gormley*, 632 F.2d at 942). More recently, in *State v. Casillas*, 952 N.W.2d 629 (Minn. 2020), the supreme court expressly rejected a request for the recognition of “a new category of unprotected speech: substantial invasions of privacy.” *Id.* at 637-38. The *Casillas* court reasoned that the United States Supreme Court “has emphatically rejected freewheeling attempts to declare new categories of speech outside the scope of the First Amendment” and does not do so unless there is “persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription.” *Id.* at 637 (quotations omitted).

Before concluding, I note that this court’s task is complicated by the fact that the HRO lacks specificity. The provision that might prohibit or restrict appellant’s future display of signs states simply that appellant “shall not harass” respondent and her minor children. It is clear that appellant may not do exactly what he did before the HRO proceeding was commenced; the district court found that appellant engaged in harassment by doing so. Otherwise, it is unclear whether appellant may display any signs on his property, even if, for example, they are not visible from respondent’s home or do not encourage honking. It appears that the district court’s HRO does not comply with the statutory requirement that an HRO give notice of “the specific conduct that will constitute a violation of the order.” Minn. Stat. § 609.748, subd. 8(a)(1) (2022). But appellant has not argued that the HRO is invalid on that ground, and, again, he does not seek a narrower order that would allow signs that do not implicate the government’s interest in protecting an unwilling listener.

For these reasons, I join in the court's decision to affirm the district court's issuance of an HRO.