

*This opinion is nonprecedential except as provided by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**

A23-1814

A23-1815

Michael Mansheim OBO Minor Child,
Respondent,

vs.

Jenna Kay Westad,
Appellant (A23-1814);

Michael Mansheim OBO Minor Child,
Respondent,

vs.

DeMarco Ramone Johnson,
Appellant (A23-1815).

Filed August 5, 2024

Affirmed

Cochran, Judge

Dakota County District Court
File Nos. 19HA-CV-23-2837, 19HA-CV-23-2836

Aaron Roy, Groshek Law, P.A., Minneapolis, Minnesota (for respondent)

DeAundres D. Wilson, Wilson Law Office, P.A., Minneapolis, Minnesota (for appellants)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Smith,
John, Judge.*

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

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In these consolidated appeals, appellants challenge the district court’s grant of harassment restraining orders (HROs) against them on behalf of respondent’s minor child. Because we discern no abuse of discretion in the district court’s issuance of the HROs, we affirm.

FACTS

The HRO petitions in this case were brought by respondent Michael Mansheim on behalf of his adopted child, D.M. Appellants Jenna Kay Westad and DeMarco Ramone Johnson are the biological parents of the child, who was born in February 2009. Appellants’ parental rights to the child were terminated in March 2015 based on multiple statutory grounds for termination, including refusal or neglect to comply with the duties imposed by the parent-child relationship, being palpably unfit to parent, failure to correct the conditions leading to out-of-home placement, and because the child was neglected and in foster care. Following the termination, Mansheim and his wife—Westad’s maternal uncle and aunt—adopted the child.

In July 2023, Mansheim petitioned for HROs against appellants, alleging that they showed up uninvited at several of the child’s baseball games. The child was 14 years old at the time. The petition also alleged that appellants’ parental rights to the child were terminated due to their neglect and abuse, and that the child “remains fearful of both parents due to the history of trauma associated with living with them and does not want to have

any contact with them.” The district court granted ex parte HROs, and appellants requested an evidentiary hearing.

At the consolidated evidentiary hearing, the district court heard testimony from the child in chambers. The district court then heard testimony from Mansheim, Westad, and Johnson in the courtroom. The district court also received the order terminating appellants’ parental rights and Mansheim’s and Westad’s recordings of interactions between Mansheim, Westad, and Johnson at the child’s baseball games on June 24 and 27, 2023.

Mansheim testified that, on June 24, after years without contact, appellants attended the child’s baseball game at a field complex in Bloomington. Although the child did not see appellants, Mansheim noticed them toward the end of the game. He told them to leave, and that the child did not want them there. Appellants did not leave.

Following the game, Mansheim approached appellants and told them not to come to the child’s games. Mansheim made the request because the child had told him “many times” that he did not want contact with appellants. Mansheim testified, and the video confirms, that Johnson responded by telling Mansheim that appellants had been coming to the child’s games for two years. Johnson also said they would “find [the child]” wherever he goes to high school to keep coming to his games.

Three days later, on June 27, appellants attended another of the child’s baseball games and watched the game from near the third baseline. After the child noticed appellants’ presence, Mansheim confronted appellants. Mansheim again told appellants to leave, and that the child did not want them there. Appellants did not leave the game. At the end of the game, appellants appeared to depart. Appellants then attended the child’s

next game at the same complex later that evening. Appellants watched the child's second game from a different location, sitting outside the outfield fence in center field.

The child testified that seeing appellants made him feel "unsafe" and that he noticed appellants spectating and "recording" him during the first game on June 27, which "messed with [his] head." He also testified that he was "afraid and anxious" because the last time he saw them he "was hurt and abused." He explained that he has experienced "stomach aches, headaches, stress eating, and [being] nervous" after seeing appellants at his games on June 27. Mansheim testified that the child was "shaken" when he saw appellants and that certain trauma-related behaviors—stress eating, hoarding food, and lying—had worsened.

When appellants testified, they confirmed that they attended the child's baseball game on June 24 and both games on June 27. Westad explained that she had attended six or seven of the child's baseball games before the game on June 24 and that appellants had not tried to contact the child during those games. Johnson similarly testified that he had attended several of the child's games before June 24 and did not contact the child. When Johnson was asked why he came to the games on June 27 after being asked not to come to the games, Johnson explained that "[Mansheim] telling [him] not to show up to a public place just did not sit right with [him]" and that Johnson "just felt like [he] wasn't doing anything wrong to just be warned that [he] shouldn't come observe someone play a game."

Following the hearing, the district court granted HROs against appellants on behalf of the child, prohibiting appellants from being within one-half mile of the child's home and school, from attending the child's athletic or extracurricular activities, and from making

public comments or social media posts about the child. The district court found reasonable grounds to believe that appellants engaged in conduct that had or was intended to have a substantial adverse effect on the child's safety, security, or privacy by having committed the following acts: "followed, monitored, or pursued" the child; "made uninvited visits"; and "attended public events after being notified that respondent's presence at the events is harassing." The district court also attached detailed supplemental findings to support its harassment determination, including findings about the termination of parental rights and the June 24 and 27 baseball games. Based on these findings, the district court ultimately found:

[Appellants] have engaged in repeated incidents of unwanted acts specifically, (a) after being told the child did not want them to attend his games and to leave, attending the child's baseball game on June 27, 2023; and (b) after again being told the child did not want them to attend his games and to leave, departing the ballfields at the end of the first game on June 27, 2023, and returning later on June 27, 2023, to attend another of the child's baseball games.

The district court further found that these acts are "objectively harassing" and that "in light of the [appellants'] documented harmful behavior as to child, a reasonable person in the child's position would experience fear, anxiety, and concern for his safety."

Johnson and Westad each appealed, and this court consolidated their appeals.

DECISION

Appellants challenge the district court's grant of HROs against them on behalf of the child, contending that the record does not support that they engaged in harassment.

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). "A district court's findings of fact will not be set aside unless clearly erroneous, and due 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), *rev. denied* (Minn. Sept. 29, 2004); *see In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021) (describing clear-error review of factual findings).

A district court may issue an HRO after a hearing 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). The term "harassment" is defined to include several different types of conduct. *Id.*, subd. 1(a) (2022). The district court determined that appellants' attendance at the child's baseball games on June 27 constituted two separate types of harassment: first, "repeated incidents of" harassing conduct under Minnesota Statutes section 609.748, subdivision 1(a)(1); and second, "a pattern of attending public events after being notified that [appellants'] presence at the event is harassing" under Minnesota Statutes section 609.748, subdivision 1(a)(3). Appellants challenge both determinations, which we address in turn.

A. Section 609.748, Subdivision 1(a)(1)

A determination of harassment under the relevant part of Minnesota Statutes section 609.748, subdivision 1(a)(1), requires “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.” We first consider appellants’ argument that they engaged in a single incident, rather than repeated incidents, and then their argument that their conduct did not have a substantial adverse effect on the child’s safety and security.

Repeated Incidents

The district court determined that appellants engaged in repeated incidents of harassment by attending both of the child’s games on June 27 after they were told on June 24 that the child did not want them at his games. Although the child had not noticed appellants on June 24, the child noticed appellants watching and recording him during the June 27 games. Appellants argue that, although they attended two games, those games occurred at the same field complex and involved the same type of conduct and thus their attendance at both games qualifies as a single incident. We are unpersuaded.

To support its determination of “repeated” incidents, the district court found that appellants attended two separate games on June 27 and that there was a break between those games. During the first game, the child noticed appellants “spectating and recording” him, and Mansheim again confronted appellants to tell them to leave the game and that the child did not want them there. Appellants watched the remainder of the first game and, following that game, appeared to depart. But after the break between games, appellants

attended the child's second game that night and watched from a different location. Based on these findings, the district court determined that appellants' conduct occurred during two discrete baseball games, separated by a break, and that appellants left and then moved to a different location to continue to watch the child. Moreover, the district court found that appellants' conduct was interrupted by Mansheim again telling appellants that their presence was unwanted. The record supports the district court's findings. Under the circumstances, we conclude that the district court did not abuse its discretion when it determined that appellants "engaged in repeated incidents."

Substantial Adverse Effect

We next turn to appellants' contention that they did not engage in "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). Such harassing conduct "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 includes conduct that "goes beyond an acceptable expression of outrage and civilized conduct, and instead causes a substantial adverse effect on another's safety, security or privacy." *Kush*, 683 N.W.2d at 846.

The district court determined that appellants' "unwanted acts of attending the child's baseball games" were "objectively harassing" and had "an objectively reasonable substantial adverse effect on the safety or security of the child." The district court based

these determinations on its finding that appellants attended multiple baseball games after being told that the child did not want them to attend his games. The district court found that having appellants come to the child's games "made [the child] feel unsafe, anxious, and afraid" and that "[s]eeing [appellants] triggered the child and has caused him to get stomachaches and headaches and to return to stress-eating, including the hoarding and hiding of food." And the district court also noted that the order terminating parental rights "describes ongoing domestic violence between [appellants], the near daily use of marijuana by [appellants] in child's presence, the unstable and inconsistent caregiving afforded the child," and, despite intervention, appellants' "continued inability or unwillingness to meet the child's needs." The district court explained that the prior termination of parental rights "underscores how [appellants'] behavior—showing up at the child's baseball games after termination of their parental rights and their long absence from the child's life—is objectively harassing" and that, "in light of [appellants'] documented harmful behavior as to child, a reasonable person in the child's position would experience fear, anxiety, and concern for his safety."

Appellants first contend that the district court improperly relied on the previous findings from the order terminating parental rights when determining that their behavior constituted harassment. But appellants cite no authority suggesting that a district court may not consider such history when determining whether conduct qualifies as harassment. To the contrary, this court has noted that "even lesser levels of conduct may still support an [HRO] when calculated to harass a fragile person." *Cf. Kush*, 683 N.W.2d at 845. And here, the district court did not rely solely on the previous order terminating parental rights

when determining that appellants harassed the child within the meaning of section 609.748, subdivision 1(a)(1). Rather, the district court made new, thorough findings about appellants' unwanted conduct—continuing to attend the child's baseball games despite his express wishes—and explained how the previous findings underlying that termination “underscore[d]” the harassing nature of that conduct. We therefore discern no error in the district court's consideration of termination of appellants' parental rights when evaluating whether appellants' conduct qualified as harassment.

With regard to whether appellants' conduct was objectively unreasonable, appellants also assert that they did not attempt to contact the child and thus their “mere presence at a public baseball game” could not be objectively unreasonable. Contrary to appellants' contention, appellants' conduct was not merely attending a public event. The district court found, and appellants do not dispute, that Mansheim told appellants on June 24 not to come to the child's games and that the child did not want them at his games. Even so, appellants attended another of the child's baseball games just three days later. And the district court further found that, although appellants were again told to leave that game and that the child did not want them to attend his games, appellants refused to leave and attended yet another baseball game that evening. Based on these unwanted acts and the appellants' history with the child, the district court found that “a reasonable person in the child's position would have considered the conduct harassing.” We agree and discern no abuse of discretion in the district court's determination that continuing to attend the baseball games was objectively unreasonable.

Finally, appellants argue that the child could not have had an “objectively reasonable belief” that his safety and security would be adversely affected by appellants’ presence at his baseball games. Appellants do not address the district court’s findings, based on the child’s testimony, that appellants’ presence “made [the child] feel unsafe, anxious, and afraid; [that] he could not focus; and that it messed with his head.” And the district court further found that “[s]eeing [appellants] triggered the child and has caused him to get stomachaches and headaches and to return to stress-eating, including the hoarding and hiding of food.” We give “due regard . . . to the district court’s opportunity to determine the credibility of witnesses.” *Kush*, 683 N.W.2d at 845. Given these findings and the district court’s findings about appellants’ past treatment of the child, we conclude that the record amply supports the district court’s determination that “a reasonable person in the child’s position would experience fear, anxiety, and concern for his safety.”

In sum, the district court did not abuse its discretion by determining that appellants engaged in “repeated incidents . . . of unwanted acts” that had or were intended to have “a substantial adverse effect on the safety [and] security” of the child, and therefore engaged in “harassment” under Minnesota Statutes section 609.748, subdivision 1(a)(1).

B. Section 609.748, Subdivision 1(a)(3)

In addition to determining that appellants’ conduct constituted harassment under section 609.748, subdivision 1(a)(1), the district court also determined that appellants engaged in harassment under section 609.748, subdivision 1(a)(3), which involves “a pattern of attending public events after being notified that the actor’s presence at the event

is harassing to another.” Minn. Stat. § 609.748, subd. 1(a)(3). Appellants challenge this finding of harassment as well.

The district court determined that appellants attended public events after being notified that their presence was harassing to the child based on its findings that appellants attended the two baseball games on June 27. Appellants concede that “the record indicates that [Mansheim] told the Appellants not to come to the games several times and that [the child] didn’t want them there.” And they do not dispute that their attendance at two games qualifies as a “pattern.” Instead, they assert that the record does not support that they were notified that their presence at the child’s baseball games was harassing before June 27. We are unpersuaded.

Appellants rely on this court’s nonprecedential opinion in *Nesmoe-Thompkins v. Lindemann* to argue that they were not notified that their presence was harassing to the child. No. A18-1008, 2019 WL 273123 (Minn. App. Jan. 22, 2019). In that case, we concluded that the district court erred by finding that the HRO respondents were notified that their presence at sporting events was harassing. *Id.* at *5. We explained that the only notice in the record “did not state that [the respondents’] presence at sporting events would be considered harassment” and instead “stated that [the respondents] were ‘to have absolutely no unsupervised contact’ with [the HRO petitioner’s] minor children.” *Id.* And because “[a]ttendance at a sporting event, by itself, is not ‘contact’ with a person who is participating in the event . . . the message sent to [the respondents] did not notify them that their presence would be considered harassment.” *Id.* We also noted that a prior HRO

between the petitioner and the respondents had prohibited contact while expressly permitting the respondents to attend the sporting events. *Id.* at *5 n.2.

Appellants assert that the circumstances here are analogous to *Nesmoe-Thompkins* and thus this court should similarly conclude based on *Nesmoe-Thompkins* that they were not notified that their presence was harassing to the child. But *Nesmoe-Thompkins* is not a precedential opinion and therefore does not bind our analysis. See Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions and order opinions are not binding authority except as law of the case, res judicata, or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”). To the extent that we consider *Nesmoe-Thompkins* for its persuasive authority, it is important to recognize that our conclusion in *Nesmoe-Thompkins* turned on the fact that the respondents were not told that they should not attend the sporting events. Here, by contrast, the district court found—and appellants concede—that appellants attended the June 27 games “after being told the child did not want them to attend his games and to leave.” Thus, unlike the respondents in *Nesmoe-Thompkins*, who did not receive notice that their attendance was unwanted, appellants were explicitly told not to attend the child’s baseball games and yet continued to do so. Accordingly, *Nesmoe-Thompkins* is fully consistent with the district court’s determination that appellants were notified that their presence at the child’s baseball games was harassing to the child.

In sum, the district court did not abuse its discretion by determining that appellants engaged in harassment under Minnesota Statutes section 609.748, subdivision 1(a)(3).

Affirmed.