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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0257**

Kelly Michels,
Respondent,

vs.

Terry Dean Johnson, Sr., et al.,
Appellants.

**Filed September 16, 2024
Affirmed
Connolly, Judge**

Kandiyohi County District Court
File No. 34-CV-20-406

Timothy J. Peters, Tyler W. Ericksen, Peters Law Firm, PLC, Minneapolis, Minnesota (for respondent)

John E. Mack, New London Law, P.A., New London, Minnesota (for appellants)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from a judgment, final contempt order, and harassment restraining order (HRO), all entered in this action arising out of a dispute between neighbors primarily over the use of a public right-of-way, appellants argue that (1) the district court erred in holding them in constructive contempt of court; (2) the district court abused its discretion in

denying their posttrial motion for a new trial or amended findings or remittitur; and (3) the HRO is unreasonable. We affirm.

FACTS

Appellants Terry and Marjorie Johnson¹ and respondent Kelly Michels are the owners of adjacent parcels of land in the Shangri-La subdivision. The Johnsons' property is situated directly to the north of Michels's property and Henderson Lake lies to the east of the parties' properties. To the west of the parties' properties lies Thorson Road, which, as part of the original plat of the Shangri-La subdivision, consists of a 66-foot-wide right-of-way that was dedicated to the public for public use forever.

The Johnsons purchased their property in 2001. A few years later, Michels purchased the two lots directly to the north of the Johnsons' property² and, in 2008, Michels purchased the lot directly to the south of the Johnsons' property. Shortly after purchasing these properties, Michels installed security cameras on the property to the north of the Johnsons' property due to vandalism that occurred on that property. In response, Terry entered the property to the north of his lot and cut the wires to the security cameras. Terry was later convicted of fourth-degree damage to property as a result of the vandalism.

Over the next few years, the relationship between Michels and the Johnsons worsened. In January 2011, Terry placed a home-made, derogatory sign within the Thorson Road right-

¹ For ease of reference, the Johnsons will be referred to individually by their first names.

² Michels later quitclaimed these lots to a limited liability company whose members included Michels and his family members.

of-way. In 2012, Michels obtained an HRO against Terry, which prohibited Terry from communicating with Michels. Terry was later convicted of violating that HRO.

Despite his conviction for violating the HRO, Terry continued to engage in harassing conduct, such as directing his granddaughter to enter Michels's property and steal a fence post, stealing a no-trespassing sign from Michels's property line, and adding objects around a planter to block Michels's access to the corner of his property. Terry also attempted to inhibit Michels's use of the full Thorson Road right-of-way by, among other things, placing objects such as shrubbery and plants along the right-of-way, plowing snow in such a manner as to block portions of Thorson Road, stringing chains across Thorson Road, and parking trailers on the road.

In October 2020, Michels initiated this action against the Johnsons and appellant Springfield Heating & Plumbing, Inc. d/b/a Johnson Plumbing, Heating & Air Conditioning (Johnson Plumbing),³ a company formerly operated by Terry and now operated by his sons.⁴ The complaint asserted claims for private nuisance, harassment, trespass, civil assault, intentional infliction of emotional distress, and piercing the corporate veil. The complaint also sought a declaratory judgment that the Thorson Road right-of-way "is available for use by [Michels] or any member of the public," and that appellants, "their family, guests, invitees, tenants, agent, or any other person, acting at the direction of the [appellants], are prohibited from inhibiting or obstructing that use in any manner, or using it for an unintended purpose."

³ The Johnsons and Johnson Plumbing will collectively be referred to as "appellants."

⁴ Michels also filed suit against the Office of the Sheriff of the County of Kandiyohi (Sheriff Eric Holien), but his claims against it were dismissed on August 16, 2021, and the Office of the Sheriff is not a party to this appeal.

The Johnsons subsequently answered and counterclaimed, asserting claims for abuse of process and invasion of privacy.

In September 2021, appellants moved for summary judgment, seeking to have all claims against them dismissed. Michels then moved for partial summary judgment on his declaratory-judgment claim, as well as appellants' counterclaims. The district court granted Michels's motion for summary judgment on appellants' counterclaim for abuse of process, but denied summary judgment in favor of Michels on appellants' counterclaim for invasion of privacy. In a separate order, the district court granted summary judgment in favor of Michels on his declaratory-judgment claim. And in a third order, the district court denied appellants' motion for summary judgment in its entirety.

In April 2022, the district court granted Michels's request to amend his complaint to add a claim for punitive damages. But, prior to trial on the parties' remaining claims, Michels moved for injunctive relief. Michels alleged that appellants continued to place obstructions in the Thorson Road right-of-way in violation of the declaratory judgment that Thorson Road is a 66-foot-wide public right-of-way that appellants cannot obstruct. Specifically, Michels alleged that appellants obstructed the right-of-way by placing a rebar stake in the right-of-way that could have damaged Michels's snowmobile, and parked a trailer in the right-of-way and chained it to a tree so that it could not be moved. In fact, the chains were placed so that they could severely injure or kill an unsuspecting snowmobiler.

A bifurcated jury trial was held in April 2023. During the first phase of the jury trial, Michels dismissed his claims against Marjorie. And, at the end of the first phase of the jury trial, the district court dismissed Michels's claims against Johnson Plumbing.

Following the first jury-trial phase, the jury found that Terry committed private nuisance, harassment, and trespassing towards Michels, but did not commit civil assault or intentional infliction of emotional distress. The jury awarded Michels \$2,500 in damages that were directly caused by Terry's nuisance or trespass, and \$150,000 in damages to compensate Michels for the pain and suffering caused by the nuisance or trespass. With respect to the Johnsons' claims, the jury found that Michels intruded upon their seclusion, and awarded the Johnsons \$20,000 in damages. The jury then considered Michels's claim for punitive damages in the second jury-trial phase, found that Terry acted with deliberate disregard for the safety of others, and awarded Michels \$28,500 in punitive damages. The district court later filed its findings of fact, conclusions of law, and order for judgment, ordering that judgment be entered (1) against Terry and in favor of Michels in the amount of \$181,000, and (2) against Michels and in favor of the Johnsons in the amount of \$20,000.

On June 16, 2023, the district court granted Michels's request for injunctive relief. The district court found that appellants "are in violation of the Declaratory Judgment by repeatedly obstructing the Thorson Road right-of-way to impede the public's right to travel on its full 66-foot width." Consequently, the district court ordered that appellants "are permanently restrained and enjoined from" participating "in any conduct that is contrary to the rights declared in the Declaratory Judgment," including (1) "[p]lacing, installing, storing, planting, burying, or projecting any object anywhere in the right of way," and (2) "[o]bstructing, interfering, harassing, or engaging in any conduct directed at, or for the purpose of discouraging, any member of the public, including [Michels], from traveling anywhere upon the right of way." The district court also ordered that: "Within 10 days of this

Order, [appellants] shall remove or cause to be removed all property, fixtures, and obstructions they have placed anywhere within the [Thorson Road] right of way.”

On July 13, 2023, Michels moved to hold appellants in contempt of court for failure to obey the order granting injunctive relief. Appellants subsequently filed a notice of motion and motion for new trial and/or amended findings or remittitur. The district court later issued an HRO in favor of Michels and against appellants on August 10, 2023, which incorporated two previous HROs filed in July 2012, and July 2014; the HRO was to remain in effect until August 2048. Appellants sought reconsideration of that HRO; that request was denied.

In the meantime, on August 16, 2023, a first-stage contempt hearing was held. Following that hearing, the district court granted Michels’s motion for civil contempt against appellants, concluding that appellants “are in constructive contempt of court by their failure to follow the Order Granting Injunctive Relief.” The district court also stated that appellants “may purge themselves of the contempt finding by complying with the Order Granting Injunctive Relief by no later than 20 days from the date of entry of this Order.”

Appellants filed a notice of appeal on October 9, 2023, which was dismissed by this court as premature. And, after the second-stage contempt hearing, the district court determined that appellants “substantially complied with the purge condition of the Contempt Order and removed obstructions from the Thorson Road right-of-way as directed.” The district court also awarded Michels “all costs and expenses, including reasonable attorney fees, incurred in the prosecution of this contempt motion,” and directed Michels to submit an affidavit of attorney fees within 21 days of the order.

On February 5, 2024, the district court denied appellants’ request for remittitur and motion for a new trial and/or amended findings. This appeal follows.

DECISION

I.

Appellants make several arguments phrased as challenges to the district court’s contempt order. This court reviews a district court’s decision to invoke its contempt powers for an abuse of discretion. *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 239 (Minn. 2019). We review such “an order for an abuse of discretion by determining whether the district court made findings unsupported by the evidence or by improperly applying the law.” *Id.* (quotation omitted).

A civil contempt order is intended to be “remedial rather than punitive because its purpose is to coerce compliance with [a court] order, not to vindicate the authority of the court.” *Mower Cnty. Hum. Servs. ex. rel. Swancutt v. Swancutt*, 551 N.W.2d 219, 222 (Minn. 1996). The nature of the contempt may be either direct or constructive. Minn. Stat. § 588.01, subd. 1 (2022). Direct contempt occurs in the presence of the court, and contempt outside the presence of the court constitutes constructive contempt. *State v. Iron Waffle Coffee Co.*, 990 N.W.2d 513, 520 (Minn. App. 2023). The “[d]isobedience of any lawful order of the court may constitute constructive contempt.” *Id.* And the supreme court has recognized that “[a] violation of an injunction is punishable as a contempt of court.” *Johnson v. Froelich*, 264 N.W. 232, 234 (Minn. 1936).

Appellants argue that (A) Marjorie and Johnson Plumbing should not have been subject to a contempt order; (B) the district court erred in imposing a contempt order that

incorporated erroneous declaratory-judgment and injunctive-relief orders against them; and (C) the district court’s contempt order was overly broad. In response, Michels argues that these arguments are not properly before us because appellants were found in contempt of the June 16, 2023, order for injunctive relief, which they “failed to . . . timely appeal.” Assuming, without deciding, that appellants’ arguments are properly before us, we turn to the merits of these arguments.

A. There was no error in holding Marjorie and Johnson Plumbing in contempt.

Appellants argue that Marjorie and Johnson Plumbing “should not have been subject to a contempt order, much less ordered to pay attorneys’ fees” because they were dismissed as parties in Michels’s lawsuit against them. We disagree. Both Marjorie and Johnson Plumbing were named defendants in the complaint filed by Michels, and the district court granted summary judgment in favor of Michels and against Marjorie and Johnson Plumbing on Michels’s declaratory-judgment claim. In addition, Marjorie and Johnson Plumbing were still named defendants when Michels moved for injunctive relief. The district court’s order for injunctive relief specifically found that Marjorie and Johnson Plumbing were “in violation of the Declaratory Judgment,” and they, along with Terry, were enjoined pursuant to that order. Although Marjorie and Johnson Plumbing were dismissed during the jury trial, before the district court issued its order granting injunctive relief in June 2023, they were not dismissed from the entire action. Rather, as the district court found, Marjorie and Johnson Plumbing were dismissed “only from [Michels’s] remaining claims that were sent to the jury—private nuisance, harassment, trespassing, civil assault, and intentional infliction of emotional distress.” In other words, Majorie and

Johnson Plumbing were never dismissed from Michels’s declaratory-judgment claim or his claim for injunctive relief that resulted in the contempt order. Appellants do not challenge the district court’s findings related to Marjorie and Johnson Plumbing’s violation of the injunction. Therefore, because Marjorie and Johnson Plumbing were still parties to the action when Michels moved for injunctive relief, and the district court granted the motion, the district court did not err in holding Marjorie and Johnson Plumbing in constructive contempt of court for their violation of the order for injunctive relief.

B. The district court did not err in relying on the declaratory-judgment order and injunction in finding appellants in contempt of court.

Appellants argue that the district court “erred in imposing a contempt order which incorporated a declaratory judgment order against” them because the “court’s declaratory judgment order of March . . . 2022 is clearly erroneous, as is its August injunction.”⁵ They first contend that the declaratory judgment was erroneous because the district court cannot enjoin the future commission of a crime unless (1) a statute expressly permits injunctive relief, or (2) there is no other action at law that would prevent the threatened action. Appellants acknowledge that the first alternative is not applicable, but claim that, because Michels had obtained an HRO against Terry, and Terry was previously charged by criminal complaint for blocking Thorson Road, an injunction should not have been issued to enjoin their conduct.

⁵ Although appellants refer to the “August injunction,” they appear to be referring to the injunction that was granted in June 2023. And, although appellants’ brief describes this issue as an error in the contempt order, their argument appears to allege errors in the order granting injunctive relief.

To support their position, appellants rely on *State v. Red Owl Stores, Inc.*, in which the supreme court stated:

From an examination of the authorities it may be said that, where the acts complained of are violations of the criminal law, the courts of equity will not on that ground alone interfere by injunction to prevent their commission, since they will not exercise their preventive power for the purpose of enforcing criminal laws by restraining criminal acts.

92 N.W.2d 103, 110 (Minn. 1958). But appellants overlook the next sentence in *Red Owl*, in which the supreme court acknowledged that courts of equity will “interfere by injunction to restrain acts amounting to a public nuisance if they affect public rights or privileges or endanger public health, regardless of whether such acts are denounced as crimes.” *Id.*

Here, Thorson Road consisted of a public right-of-way. Because appellants’ actions amounted to a public nuisance by interfering with the public’s rights and privileges to use this right-of-way, the district court acted within its discretion to issue a declaration and later, an injunction, related to the Thorson Road right-of-way. And, as the district court determined, Terry’s “previous criminal convictions for violating the HRO have not resulted in [appellants] stopping their conduct in obstructing the right-of-way or in targeting their conduct towards [Michels].” As such, appellants’ reliance on *Red Owl* is unavailing.

Next, appellants argue that the district court “confuses the traveled portion of Thorson Road with the Thorson Road right-of-way.” They argue that, under *State v. Davis*, 375 N.W.2d 599, 600 (Minn. App. 1985), they may use “one-half of the roadway in any manner compatible with use by the public of its easement” because the Johnsons are abutting landowners. Appellants contend that, because “none of the actions [Michels]

complain[ed] about took place on the traveled portion of Thorson Road,” but rather “took place on the right of way of Thorson Road in front of the Johnson property,” and did not obstruct the right-of-way, the district court’s declaratory judgment and corresponding injunction are erroneous.

We are not persuaded. In *Davis*, the defendant was criminally charged with maintaining a nuisance by intentionally obstructing a public right-of-way. *Id.* at 600. Before trial, the defendant moved to dismiss the criminal complaint, alleging that the state failed to show that a rock garden was an obstruction to the public right-of-way. *Id.* In fact, the defendant’s motion acknowledged that “civil injunctive relief rather than a criminal complaint was the proper procedure for the city council to pursue in resolution of the matter.” *Id.* On appeal from the district court’s dismissal of the complaint, this court acknowledged the “general rule” that “[a]n abutting owner may use his one-half of the roadway in any manner compatible with use by the public of its easement.” *Id.* (quotation omitted). But the court reversed and remanded because “[t]he critical factual issue of whether [the defendant’s] rock garden interfered with or obstructed the public’s right-of-way within the meaning of the criminal statute was a jury issue.” *Id.* In so ruling, this court added that “we do not favor the use of criminal statutes as a substitute for civil remedies.” *Id.*

This case, unlike *Davis*, is a civil case. And this court in *Davis* indicated that a civil action was the proper avenue to pursue alleged obstructions with public right-of-ways. *See id.* Michels’s request for declaratory relief is such a civil action. Moreover, the rule in *Davis* cited by appellants states that “[a]n abutting owner may use his one-half of the

roadway in any manner compatible with use by the public of its easement.” *Id.* The record reflects that Thorson Road is a 66-foot wide, public right-of-way that was expressly donated and dedicated for use by the public forever. As such, appellants are correct that, as members of the public and abutting landowners, they are entitled to use the Thorson Road right-of-way in a manner compatible with its use by the public. But, by obstructing the right-of-way, appellants were not using the right-of-way in a compatible manner.

Appellants further argue that they did not obstruct the Thorson Road right-of-way because “[a] flower bed” and “[a] fire pit [do] not interfere with public use.” But appellants admit in their brief and reply brief that a “traveler may go around” the fire pit and flower bed. An object that forces a traveler to “go around” it constitutes an obstruction. See *Black’s Law Dictionary* 1292 (12th ed. 2024) (defining “obstruction” as “[s]omething that impedes or hinders, as in a street, river, design, flight path, etc.; an obstacle). Moreover, the record reflects that appellants obstructed the right-of-way by, among other things, parking trailers in the right-of-way. In fact, as the district court determined in its order granting Michels’s summary-judgment motion for declaratory relief, Terry “admitted that Thorson Road is a public right of way that is [66]-feet wide and that he obstructed it” by “plac[ing] objects obstructing Thorson Road.” Because appellants engaged in conduct obstructing the Thorson Road right-of-way, the district court’s order granting Michels declaratory relief, and the corresponding injunction, were not erroneous. Therefore, the

district court did not err in imposing a contempt order that relied on the declaratory judgment and injunction.⁶

C. The contempt order was not overly broad.

Appellants argue that the “district court’s contempt order was overly broad and otherwise flawed.”⁷ Under rule 65.04, an order granting an injunction “shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.” Minn. R. Civ. P. 65.04. Injunctions must precisely define prohibited conduct in order “to prevent uncertainty and confusion on the part of those faced with injunctive orders, and to avoid the possible founding of a contempt citation on a decree too vague to be understood.” *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974).

Appellants first contend that the injunction is “overbroad” because it “required [Terry] to remain 1,000 feet away from . . . [Michels].” But this geographic restriction was not part of the injunction; rather it is contained in the HRO issued on August 10, 2023. And there is nothing overbroad about the 1,000-foot requirement.

⁶ Appellants also note that, on question six of the special-verdict form, the jury answered “no” when asked whether Terry failed to remove something on the land that he had a duty to remove. But the questions presented to the jury did not involve the declaratory-relief issue. Rather, the issues before the jury involved Michels’s claims for nuisance, harassment, trespass, civil assault, and intentional infliction of emotional distress. Thus, the answers on the jury’s special-verdict forms are not relevant to the declaratory-judgment and injunction issues.

⁷ Although appellants phrase this issue as one challenging the contempt order, the crux of their argument challenges the overbreadth of the injunction.

Second, appellants contend that paragraph three of the district court's order for injunctive relief is overbroad. This paragraph "permanently restrained and enjoined" appellants from participating in any conduct contrary to the declaratory judgment, including "[p]lacing, installing, storing, planting, burying, or projecting any object anywhere in the right of way within the [66]-foot width of Thorson Road," and "[o]bstructing, interfering, harassing, or engaging in any conduct directed at, or for the purpose of discouraging, any member of the public, including [Michels], from traveling anywhere upon the right of way within the [66]-foot width of Thorson Road." Appellants claim that this "injunction is over-broad because it includes the whole of the right-of-way of Thorson Road and the public was never obstructed from traveling on the road."

We disagree. The original plat of the Shangri-La subdivision donated the dedicated Thorson Road to the public for public use forever, and the plat depicts Thorson Road as a 66-foot-wide right-of-way. Because the entire 66-foot-wide right-of-way was donated for public use, appellants were prohibited from obstructing it. Appellants admitted to obstructing the right-of-way, and their admission is supported by the record. Based on this conduct, the district court enjoined appellants from engaging in further obstructive conduct. And the order specifically sets forth the conduct to be enjoined. There is nothing overbroad about paragraph three of the order for injunctive relief.

Third, appellants argue that paragraph four of the order for injunctive relief is "infirm." Again, we disagree. Paragraph four of the injunction order provides, that within ten days of the order, appellants "shall remove or cause to be removed all property, fixtures, and obstructions they have placed anywhere within the right of way within the [66]-foot

width of Thorson Road.” There is nothing vague or ambiguous about this language. Although appellants claim that there is no evidence that Marjorie or Johnson Plumbing placed any obstructions on the right of way, making it impossible for Terry to comply with the injunction, the record reflects otherwise. For example, Marjorie specifically admitted that she planted flowerbeds in the right-of-way. And Terry’s son acknowledged parking a trailer in the right-of-way. As such, paragraph four of the injunction order is not overbroad.

In sum, appellants have failed to establish that neither the contempt order, nor the order for injunctive relief on which it was based, is overbroad or otherwise legally erroneous. The district court did not err by holding appellants in constructive contempt of court.

II.

Appellants challenge the denial of their posttrial motion for a new trial or amended findings or remittitur. “[T]he question of whether a motion for a new trial on the ground of excessive damages should be granted or whether the verdict should be reduced rests in the practical judgment and sound discretion of the [district] court.” *DeWitt v. Schuhbauer*, 177 N.W.2d 790, 795 (Minn. 1970). A motion for a new trial should be granted if “the verdict is so contrary to the preponderance of the evidence as to imply that the jury failed to consider all the evidence or acted” under a mistake or from an improper motive. *Lamb v. Jordan*, 333 N.W.2d 852, 855-56 (Minn. 1983) (quotation omitted). Remittitur may be granted on the basis that “an excessive verdict appears to have been given under the influence of passion and prejudice” or “on the ground that the damages are not justified by the evidence.” *Busch v. Busch Constr. Inc.*, 262 N.W.2d 377, 401 (Minn. 1977).

A district court's denial of posttrial motions for amended findings or a new trial will not be disturbed absent a clear abuse of discretion. *State ex rel. Fort Snelling State Park Ass'n v. Minneapolis Park & Rec. Bd.*, 673 N.W.2d 169, 177-78 (Minn. App. 2003), *rev. denied* (Minn. Mar. 16, 2004). Similarly, the decision whether to grant a remittitur is within a district court's sound discretion. *Bigham v. J.C. Penney Co.*, 268 N.W.2d 892, 898 (Minn. 1978). An abuse of discretion occurs only when the district court's ruling is based on an erroneous view of the law or is against the facts in the record. *City of North Oaks v. Sarpal*, 797 N.W.2d 18, 24 (Minn. 2011).

A. New trial or amended findings

Appellants argue that the district court abused its discretion by denying their motion for a new trial or amended findings because the jury's (1) answers on the special-verdict forms are inconsistent with the district court's orders related to the Thorson Road right-of-way; and (2) award of damages is unreasonable and not supported by the record.

1. *There was no inconsistency in the jury's answers to the special-verdict forms.*

Appellants argue that the jury's answer to question 6.b. of the special-verdict form, and the district court's adoption of this finding in finding seven of its order following the jury trial,⁸ is inconsistent with the district court's determinations in other orders. Question 6.b. of the special-verdict form asks whether Terry "[f]ail[ed] to remove something on [Michels's] land that he had a duty to remove," and the jury answered, "No," to that

⁸ Appellants' brief refers to "finding no. 17." But it appears that appellants are referring to finding seven of the district court's findings of fact, conclusions of law, order for judgment and judgment following jury trial.

question. Appellants argue that, based on the jury's answer to question 6.b., the jury determined that Terry had no duty to remove a firepit and other objects appellants placed on the right-of-way, which is inconsistent with the district court's determination that Terry had such a duty.

Appellants' argument mischaracterizes the jury's verdict. As Michels points out, question six of the special-verdict form addresses Michels's trespass claim, not his claim for private nuisance. Question 6.a. asks if Terry ever entered "the property belonging to . . . [Michels] or cause[d] some object or third person to go on the property of . . . [Michels]?" The jury answered, "Yes," to this question. With respect to question 6.b., the jury then determined that Terry did not fail to remove something on the land that he had a duty to remove. Thus, the jury's answer to question six involved whether Terry had a duty to remove something from Michels's land, not from the Thorson Road right-of-way. The jury never determined that appellants had no duty to remove the fire pit and other objects from the Thorson Road right-of-way.

Moreover, the district court never made that determination. Rather, the district court adopted the jury's finding that Terry had no duty to remove any objects from Michels's land. Conversely, the district court's order granting summary judgment on Michels's claim for declaratory relief stated that appellants cannot keep or place objects or material in the Thorson Road right-of-way that would interfere with the public's use. The district court's order granting injunctive relief reached the same conclusion, as did the district court's order denying appellants' request for posttrial relief. Thus, there is no inconsistency regarding the jury's verdict, the district court's adoption of the jury's verdict, or any other order

issued by the district court related to appellants' duty to remove any objects or material from the Thorson Road right-of-way.

2. *The jury's award of damages is reasonable and supported by the record.*

Appellants also challenge the jury's award of damages. This court will not set aside a jury verdict on damages unless it is manifestly and palpably contrary to the evidence viewed as a whole and in the light most favorable to the verdict. *Raze v. Mueller*, 587 N.W.2d 645, 648 (Minn. 1999). Proof of the amount of damages to an absolute certainty is not required—the loss need only be established to reasonable accuracy. *Bonhiver v. Graff*, 248 N.W.2d 291, 304 (Minn. 1976).

Question 15 of the special-verdict form asked the jury: “What amount of money will fairly and adequately compensate [Michels] for the damages that were directly caused by the nuisance or trespass?” In response to this question, the jury awarded Michels \$2,500 in damages. Question 16 of the special-verdict form then asked the jury: “What amount of money will fairly and adequately compensate [Michels] for the pain and suffering caused by the trespass or nuisance?” In response to this question, the jury awarded Michels \$150,000 in damages.

Appellants argue that Michels's “alleged pain and suffering are ‘damages that were directly caused by the nuisance or trespass’” and, therefore, the jury was limited to an award of damages under either question 15 or question 16, but not both. But questions one through four of the special-verdict form asked the jury if (1) Terry created a nuisance that affected Michels's property, (2) Terry intentionally created the nuisance, (3) Terry negligently interfered with Michels's enjoyment of his property, and (4) Terry's

interference was a direct cause of damages to Michels. By answering “yes” to all these questions, the jury determined that Michels prevailed on his nuisance claim and suffered damages as a result. And by answering “yes” to whether Terry’s conduct was a direct cause of damages to Michels, the jury was instructed to answer questions 15 *and* 16. Question 15 relates to economic damages caused by the nuisance and question 16 relates to pain and suffering caused by the nuisance.

The supreme court has recognized that *both* economic damages and damages for pain and suffering may be awarded in a nuisance claim. *See Holmberg v. Bergin*, 172 N.W.2d 739, 745 (Minn. 1969) (acknowledging that “a plaintiff may be entitled to recover damages for property damage and physical suffering, discomfort, and inconvenience resulting from the nuisance”). And the extent of the relief to be granted lies largely within the discretion of the fact finder. *Matter v. Nelson*, 478 N.W.2d 211, 215 (Minn. App. 1991). Because economic damages and damages for pain and suffering may be awarded in a nuisance claim, the jury acted within its purview by awarding damages for both.

Appellants also contend that the jury’s award of \$150,000 in damages is not supported by its findings because the jury found that Michels did not suffer severe emotional distress. Indeed, the jury declined to find that Michels suffered severe emotional distress. But severe emotional distress, as is required for prevailing on an intentional-infliction-of-emotional-distress claim, is not the same standard as damages for pain and suffering. The jury instructions defined both concepts and the definitions did not preclude finding one and not the other.

Appellants further argue that the jury's award of \$150,000 in damages is not supported by the record because "[n]uisance is a form of injury to property, and [only] in the rarest of cases could cause pain or suffering to a human being." And appellants claim any damages Michels sustained for trespass were negligible because "the only trespass involved placing a sign on [Michels's] property and taking it down and piling some snow on [Michels's] side of the right of way." Thus, appellants claim that "the award of \$2,500 rather than \$150,000 should prevail."

Appellants' argument is unpersuasive. As appellants acknowledge, "the rarest of cases [of nuisance] could cause pain or suffering to a human being." This is one of those "rarest of cases." In the district court's order denying appellants' motion for a new trial or amended findings, the court found that "the evidence presented at trial showed a concerted, ten-plus year nuisance that continued, got worse at times, created safety hazards, and included hate speech. The issues resulted not just in this litigation, but a multitude of calls to Law Enforcement, [HROs], and convictions for violating the [HRO]." The district court's findings are supported by the record and demonstrate that appellants' lengthy, outrageous, and incessant conduct supports the jury's award of \$150,000 in damages. Therefore, the jury's award of damages is not manifestly and palpably contrary to the evidence when viewed as a whole.

B. Remittitur

Appellants challenge the denial of their request for remittitur of the jury's award of punitive damages. "Remittitur is relief ordered by a district court after determining that a jury award was excessive." *Roach v. County of Becker*, 962 N.W.2d 313, 318 (Minn.

2021). When a request for remittitur is made, the district court must “consider all of the evidence and determine whether the verdict is within the bounds of the highest sustainable award under the evidence.” *Border State Bank of Greenbush v. Bagley Livestock Exch., Inc.*, 690 N.W.2d 326, 336 (Minn. App. 2004) (quotation omitted), *rev. denied* (Minn. Feb. 23, 2005).

Appellants argue that, if the jury awarded compensation for nuisance and trespass in the amount of \$2,500, “then the punitive damages award [of \$28,500] must be reduced to at least \$3,700 because the United States Supreme Court has determined that a punitive damages award may not exceed actual damages by more than 150%.” But appellants cite no authority to support this position. Without any authority supporting their position, appellants have not shown that the punitive-damages award must be reduced to \$3,700. *See Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (“[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal[,] . . . [and] the burden of showing error rests upon the one who relies upon it.”).

Appellants also argue that the punitive-damages award should be reduced because the United States Supreme Court has limited punitive damages to a single-digit ratio between compensatory and punitive damages. To support this position, appellants cite *State Farm Mut. Auto Ins. Co. v. Campbell*, in which the United States Supreme Court stated that “in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree will satisfy due process.” 538 U.S. 408, 425 (2003). Appellants seem to argue that, “since the \$150,000 award contradicted the jury’s finding on question 15, punitive damages must be determined based upon the \$2,500

and thus would be under that amount.” And appellants claim that, when punitive damages are properly calculated from the jury’s award of \$2,500 for nuisance, a punitive damages award of \$28,500 would violate the single-digit-ratio limitation discussed in *Campbell*.

We are not persuaded. As addressed above, the jury’s findings on the special-verdict forms are not contradictory. Under question 15 of the special-verdict form, the jury awarded Michels \$2,500 as compensation for economic damages directly caused by the nuisance or trespass. And under question 16, the jury awarded Michels \$150,000 to compensate Michels for the pain and suffering caused by the nuisance or trespass. Because both economic damages and damages for pain and suffering may be awarded in a nuisance claim, they are not contradictory. See *Holmberg*, 172 N.W.2d at 745. Moreover, the jury’s award of \$2,500 in economic damages, and \$150,000 for the pain and suffering, were awarded to “compensate” Michels for his injury. As such, the jury awarded Michels \$152,500 in compensatory damages, and an award of \$28,500 in punitive damages is well within the single-digit ratio discussed in *Campbell*.

Moreover, despite appellants’ argument to the contrary, *Campbell* does not, in itself, support appellants’ position that punitive damages in excess of a single-digit ratio between compensatory and punitive damages are excessive. In *Campbell*, the Supreme Court acknowledged that it has “been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award.” 538 U.S. at 424. And in *Campbell*, the Court again declined “to impose a bright-line ratio which a punitive damages award cannot exceed.” *Id.* at 425. Instead, the Court noted that, although awards of punitive damages of more than four times the amount of compensatory

damages might be close to the line of constitutional impropriety, there is a long legislative history, dating back over 700 years and going forward, providing sanctions for double, treble, or quadruple damages to deter and punish. *Id.* The Court then stated that, “[w]hile these ratios are not binding, they are instructive,” and “demonstrate what should be obvious: Single-digit multipliers are more likely to comport with due process, while still achieving the State’s goals of deterrence and retribution, than awards with ratios in range of 500 to 1.” *Id.* Thus, even if the jury’s award of punitive damages in this case were outside a single-digit ratio, *Campbell* would not mandate a reversal of such an award.

Finally, appellants argue that, because Terry has been convicted criminally of the same acts that Michels alleges in his civil suit, the principles of res judicata and collateral estoppel bar the recovery in this case. But for both res judicata and collateral estoppel to apply, the earlier claim must involve the same parties or their privies. *See Hauschildt v. Beckingham*, 686 N.W.2d 829, 837, 840 (Minn. 2004) (setting forth the elements of res judicata and collateral estoppel, both of which require that the earlier claim involve the same parties or their privies). Michels was not a party to the criminal proceedings. Therefore, the principles of res judicata and collateral estoppel did not bar Michels from bringing his civil action against Terry.

In sum, appellants have not shown that the jury’s award of punitive damages was excessive. Accordingly, the district court did not abuse its discretion in denying appellants’ request for remittitur.

III.

Appellants challenge the reasonableness of the district court’s August 2023 HRO. A district court may grant an HRO if it “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” includes “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) (2022). We review a district court’s issuance of an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

The district court’s August 2023 HRO prohibited Terry “from being within 1,000 feet of [Michels’s] properties. The HRO also prohibited Terry from displaying “any signs regarding LGBTQ issues that face towards [Michels’s] property or that are visible from the common access road used by [Michels].” Although the district court ordered the HRO to remain in effect until 2048, the court ordered that the “geographical restriction . . . shall remain in effect only [for two years] except that [Terry] may request to vacate or modify the geographical restriction sooner if the order has been in effect for at least one year and [Terry] has not violated any conditions of the order.”

Appellants argue that the HRO is overly broad and unreasonable because the order prohibiting Terry from being within 1,000 feet of Michels’s properties effectively “bars [Terry] from his home.”⁹ To support their position, appellants cite *Dayton Hudson Corp.*

⁹ Appellants also appear to argue that the HRO is problematic because it interferes with Terry’s constitutional right to “enjoy a homestead.” But appellants did not raise this issue

v. Johnson, 528 N.W.2d 260 (Minn. App. 1995), for the proposition that an HRO “is overly broad if it prevents lawful conduct.” But appellants’ reliance on *Johnson* is misplaced. In *Johnson*, this court considered whether a corporation fits the statutory definition of a party entitled to an HRO. 528 N.W.2d at 262-63. Although this court determined that “[a] corporation fits the statutory definition of a party entitled to a restraining order,” it did not consider the issue presented here; whether an HRO is overly broad and unreasonable if it effectively bars an individual from his or her home. *See id.*

Moreover, despite appellants’ argument that an HRO restricting Terry’s access to his home is per se unreasonable, there is statutory authority indicating that an individual can legally be restrained from property even if the individual has an ownership interest. For example, Minn. Stat. § 518B.01, subd. 6(a)(2) (2022), provides that an order for protection (OFP) can exclude an abusing party from a shared dwelling. And this court has recognized that Minnesota’s HRO and OFP statutes “are sufficiently similar so that we may recognize caselaw construing the former as applicable to the latter.” *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995). There is also nothing in the HRO statute that limits the geographic scope of a no-contact provision. *See Minn. Stat. § 609.748* (2022). Thus, Terry’s ownership interest in his property did not necessarily preclude the district court from issuing an HRO restricting Terry from his property.

below and the district court never considered whether the geographical restriction violated appellants’ alleged constitutional right to “enjoy a homestead.” We generally will not consider issues not presented to or considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). As such, appellants’ arguments related to Terry’s alleged constitutional right to “enjoy a homestead” are not properly before us.

Turning to the reasonableness of the geographic restriction, the district court acknowledged that the “geographic restriction [in the HRO] results in [Terry’s] inability to occupy his residence.” And the district court stated that such a restriction was “not arrived at lightly.” But the depth of appellants’ conduct is established in the district court’s findings in its memorandum in support of the HRO. These findings are supported by the record and demonstrate the egregiousness of appellants’ conduct. HROs seek to end litigation by constructing remedies to deter and prevent future harassment. *See* Minn. Stat. § 609.748, subd. 5(a). The district court attempted to fashion an order consistent with this statute and, in light of appellants’ failure to abide by previous orders, an HRO restricting Terry from accessing his home was reasonable under the unusual and persistent circumstances of this case. And the 1,000-foot geographic restriction contained in the HRO was ordered to be in effect for only two years, rather than the full 50-year time-period established in the HRO. In fact, the order allows Terry to request modification of the geographic restriction within one year if he has not violated any conditions of the order. As such, appellants cannot show that the district court’s geographic restriction contained in the August 2023 HRO is unreasonable.¹⁰

Appellants further argue that the provision of the HRO prohibiting display of signs related to LGBTQ issues violates their rights under the First Amendment. But this argument is not properly before us because it was not argued to or decided by the district court. *See Thiele*, 425 N.W.2d at 582 (stating that this court does not generally consider

¹⁰ We note that, at oral argument, counsel for appellants acknowledged that the Johnsons have listed their home for sale.

issues that were not presented to *and considered by* the district court). Moreover, the HRO does not violate appellants' right to free speech because the HRO seeks to prevent future harassment by appellants against Michels and is carefully crafted not to restrict appellants' speech in any other way. *See Rew v. Bergstrom*, 845 N.W.2d 764, 781 (Minn. 2014) (rejecting the appellant's as-applied challenge on the ground that "the district court carefully crafted the specific terms and conditions of the extended [OFP] in light of the significant government interest at stake: the prevention of future of domestic abuse against [the respondent]," and the appellant was not prevented "from expressing his ideas and messages in a number of other forums and ways").¹¹

In sum, appellants have not established that the district court's August 2023 HRO was unreasonable or overbroad, or otherwise violates their constitutional rights. Accordingly, the district court did not abuse its discretion in issuing the August 2023 HRO.

Affirmed.

¹¹ In their reply brief, appellants argue that the HRO should be reversed because the "procedure by which this [HRO] was sought and obtained did not come close to compliance with" the procedural requirements of Minn. Stat. § 609.748. But this argument is not properly before us because it was raised for the first time in appellants' reply brief. *See King's Cove Marina, LLC v. Lambert Com. Constr. LLC*, 958 N.W.2d 310, 318 n.5 (Minn. 2021) (noting that appellate courts do not consider arguments raised for the first time in a reply brief).