

STATE OF MINNESOTA
IN COURT OF APPEALS

A25-0969

Peter Richard Rickmyer,

Appellant,

vs.

Xenos Letoi Brooks,

Respondent.

ORDER OPINION

Hennepin County District Court
File No. 27-HA-CV-25-55

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Jesson, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Appellant Peter Richard Rickmyer appeals from a district court order denying his request for a Harassment Restraining Order (HRO) against his neighbor, respondent Xenos Letoi Brooks.¹

2. Rickmyer filed a petition for an HRO against Brooks in January 2025, alleging that Brooks “installed a Ring surveillance camera on the outside second floor of [his] property.” He further alleged that the camera was pointed into Rickmyer’s backyard

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

¹ Brooks did not file a brief in this appeal and this court ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

and that it photographed his home and yard. A district court referee denied Rickmyer's request for ex parte relief but ordered a hearing on the matter.

3. Prior to the hearing, Rickmyer filed an amended petition for an HRO. The amended HRO petition revised the date range and further alleged that Brooks's placement of the Ring camera on the south side of his house "above his fence was specifically intended to photograph [Rickmyer] without [his] knowledge or permission." Rickmyer also alleged that the "invasive surveillance has caused significant distress to" Rickmyer.

4. The district court held an evidentiary hearing on the amended petition on March 12, 2025. Rickmyer appeared but Brooks did not. The district court continued the matter because Brooks had not been served. A second hearing was held on May 29, 2025, following service on Brooks by alternate means. Rickmyer appeared but Brooks again did not.

5. The district court thereafter issued an order dismissing the amended petition for an HRO. In its order, the district court concluded, based on the evidence presented, that Rickmyer "did not prove that harassment occurred" and that "the simple placing of a [R]ing camera does not qualify as harassment under § 609.748." The court further concluded that "[t]he act of taking unwanted photographs of an adult, alone, does not qualify as harassment under that statute."

6. Rickmyer appeals, raising several issues in a conclusory manner. Appellate courts may "decline to reach [an] issue in the absence of adequate briefing." *State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997). "An assignment of error based on mere assertion and not supported by any argument or

authorities in appellant's brief is [forfeited] and will not be considered on appeal unless prejudicial error is obvious on mere inspection." *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). "While an appellant acting pro se is usually accorded some leeway in attempting to comply with court rules, he is still not relieved of the burden of, at least, adequately communicating to the court what it is he wants accomplished and by whom." *Carpenter v. Woodvale, Inc.*, 400 N.W.2d 727, 729 (Minn. 1987) (citation omitted). Rickmyer's arguments on appeal are deficient. While Rickmyer's brief does cite legal authority, he does not adequately explain how the authority he cites supports his arguments. Consequently, we could decline to address his arguments. Nonetheless, we address each argument below and discern no basis for reversal of the district court's denial of his request for an HRO against Brooks.

7. Minnesota Statutes section 609.748 (2024) governs the issuance of an HRO. A district court may grant a petition for an HRO following a hearing if it determines "there are reasonable grounds to believe that [a person] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3). "Harassment" for purposes of section 609.748 includes, 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). Harassment under section 609.748 "does not depend entirely on whether the 'target' suffers adverse effects." *Dunham v. Roer*, 708 N.W.2d 552, 566 (Minn. App. 2006), *rev. denied* (Minn. Mar. 28, 2006). Rather, the relevant part of the statute "requires both (1) *repeated* intrusive or unwanted acts, words,

or gestures and (2) a *substantial* adverse effect or an intent to adversely affect the safety, security, or privacy of another.” *Id.* (citing Minn. Stat. § 609.748, subd. 1(a)(1)). In other words, the district court must find “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.” *Id.* at 567.

8. We review a district court’s decision whether to issue 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.” *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). We review the district court’s legal conclusions de novo. *Peterson*, 755 N.W.2d at 761.

9. Rickmyer first argues that Brooks’s failure to appear at the HRO hearing amounts to a “procedural default” that required the district court to issue the requested HRO against Brooks and he contends that the district court abused its discretion by declining to do so. We disagree. Under section 609.748, subdivision 5(b), the district court “may” issue an HRO following service of the petition and a hearing if “the court finds . . . there are reasonable grounds to believe that the respondent has engaged in harassment.” There is no provision requiring or even permitting the district court to issue an HRO based solely upon the failure of the respondent to appear at the HRO evidentiary hearing. *See* Minn. Stat. § 609.748. Consequently, even if the respondent fails to appear, the petitioner retains the burden to present evidence sufficient to support a determination by the district court that there are reasonable grounds to believe that the respondent

engaged in harassment before the district court may issue an HRO against the respondent. *See id.*, subd. 5(b); *see also C.O. v. Doe*, 757 N.W.2d 343, 352 (Minn. 2008) (stating that when a statute does not specify each party’s burden of proof, “[t]he general rule is that the burden of proof rests on the party seeking to benefit from a statutory provision”). Moreover, the use of the word “may” in section 609.748 confers discretion on the district court regarding the matter addressed by the statute. *See Kemp v. Kemp*, 608 N.W.2d 916, 920 (Minn. App. 2000) (making this observation in the context of a child-support appeal); *see* Minn. Stat. § 645.44, subd. 15 (2024) (stating that “[m]ay” is permissive”). Thus, even if Rickmyer had shown that harassment had occurred, the district court still had discretion to deny an HRO. Under these circumstances, Brooks’s mere failure to appear could not be independently sufficient to justify the grant of an HRO.

10. Rickmyer’s conclusory arguments to the contrary are not persuasive. Citing to *Dunham*, Rickmyer argues that dismissing his HRO “violates basic procedural fairness principles.” But *Dunham* deals with a constitutional challenge to the harassment statute; the case says nothing about a procedural default. 708 N.W.2d at 573. Rickmyer also relies on section 609.748, subdivision 5(b), to support his position. But, as discussed above, subdivision 5(b) does not authorize the district court to grant a “default” HRO when the respondent fails to appear. Minn. Stat. § 609.748, subd. 5(b). The district court may grant an HRO upon a showing that Brooks’s conduct was objectively unreasonable. *Dunham*, 708 N.W.2d at 567. The district court concluded that Rickmyer did not make that showing. Accordingly, we discern no abuse of discretion by the district court in declining to issue an HRO based solely on Brooks’s absence at the hearing.

11. Rickmyer next argues that the district court abused its discretion by “impos[ing] an improper evidentiary burden by requiring photographic proof” of harassment. We disagree. The district court did not require Rickmyer to provide “photographic proof.” Rather, the district court concluded that “[t]he act of taking unwanted photographs of an adult, alone, does not qualify as harassment under [the] statute.” The district court, in its order, also found that Rickmyer’s “petition failed to allege that the camera was operating or recording images.” To the extent that Rickmyer’s argument relies on this finding, we note that this finding did not set forth an evidentiary burden as suggested by Rickmyer. Rather, this finding by the district court simply describes the amended HRO petition that was the focus of the hearing. We therefore discern no abuse of discretion on the part of the district court in its definition of harassment or the evidentiary burden that it applied.

12. Rickmyer also asserts that the district court improperly excluded evidence of an email communication from Brooks’s attorney to Rickmyer regarding a potential settlement of the issues between the parties. This court is limited to reviewing documents in the record at the time of the district court’s decision, and the document referred to by Rickmyer is not part of the record on appeal. *See* Minn. R. Civ. App. P. 110.01; *see also Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988) (“An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below.”). Additionally, there is no indication in the record that Rickmyer offered the document into evidence or otherwise filed the email

correspondence with the district court before that court made its decision.² “Generally, we will not consider an issue not addressed below.” *In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016) (citing *Thiele*, 425 N.W.2d at 582). Therefore, we decline to reach the issue as not properly before this court.

13. Finally, Rickmyer contends that the district court “err[ed] by treating ongoing harassment as an isolated event rather than as part of a legally distinct pattern.” This argument appears to be based on a misreading of the district court’s order. In its order, the district court concluded that “[t]he act of taking unwanted *photographs* of an adult, alone, does not qualify as harassment under [Minn. Stat. § 609.748].” (Emphasis added.) The district court’s order contemplates multiple photographs and thus recognizes that Rickmyer alleges multiple events. And the district court concluded that the evidence presented regarding unwanted photographs did not meet the standard of repeated incidents of intrusive or unwanted acts that are “objectively unreasonable” and therefore Rickmyer did not demonstrate reasonable grounds to believe that Brooks engaged in “harassment” under section 609.748, subdivision 1(a). Therefore, we discern no abuse of discretion in the district court’s analysis of whether Rickmyer met the legal standard for issuance of an HRO or its decision to dismiss Rickmyer’s amended petition for an HRO.

IT IS HEREBY ORDERED:

1. The district court’s order is affirmed.

² Rickmyer did not order a transcript of the court proceedings. Consequently, it is unclear whether he raised any argument related to this email communication or made a motion to offer the document into evidence. And because Rickmyer did not order a transcript, our review is limited to documents in the record. *Thiele*, 425 N.W.2d at 582-83.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: January 6, 2026

BY THE COURT



Judge Jeanne M. Cochran