

*This opinion is nonprecedential except as provided by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
A26-0263**

Erika Cappiello,
Respondent,

vs.

Andrew John Whitney,
Appellant.

**Filed September 14, 2026
Affirmed
Schmidt, Judge**

Hennepin County District Court
File No. 27-HA-CV-25-1707

Erika Cappiello, Spring Park, Minnesota (pro se respondent)

Andrew C. Wilson, Wilson & Clas, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Schmidt, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Andrew John Whitney challenges the district court's grant of the harassment restraining order (HRO) against him. Because the district court did not make clearly erroneous findings of fact or misapply the harassment statute, we affirm.

FACTS

Respondent Erika Cappiello petitioned the district court for an HRO against Whitney, with whom she previously had a relationship. The district court granted an ex parte HRO and scheduled an evidentiary hearing. At the hearing, Cappiello testified and was subject to cross-examination by Whitney's trial counsel, Whitney chose not to testify, and the district court did not receive any exhibits.¹

Cappiello testified that she and Whitney reside in the same apartment complex and Whitney continually approached her in the apartment building, at the apartment's swimming pool, the smoking area, and the firepit. Cappiello described Whitney as aggressive—yelling and swearing at her—and testified that she was scared of him.

Cappiello testified about four separate incidents involving Whitney. First, Cappiello discussed a phone call during which Whitney screamed at Cappiello, “blamed Cappiello for everything[,]” called her a piece of crap, a drunk, and other insults. Cappiello told Whitney that their relationship was not healthy due to his aggression, that she was done, and that she wanted Whitney to leave her alone.

Second, Cappiello testified that, a few days after that phone call, Whitney approached her, repeatedly yelled “where's your man?” at Cappiello. Whitney then became very aggressive and continued to scream at Cappiello. Cappiello told Whitney to leave and contacted law enforcement when he refused.

¹ Cappiello uploaded exhibits to the Minnesota Digital Exhibit System but did not provide the exhibits to Whitney's counsel before the hearing. As such, the district court did not receive the exhibits into evidence and they are not a part of the record on appeal.

Third, Cappiello testified that Whitney showed up, uninvited, a day or two later at Cappiello's apartment with a pizza. Cappiello would not let Whitney into her apartment.

Fourth, Cappiello described having to contact law enforcement twice on the same day following incidents at the apartment pool, fence, and firepit. Cappiello testified that she was at the pool with her daughter and granddaughter when Whitney sat next to them, stared at Cappiello's daughter and granddaughter, and repeatedly asked the granddaughter for her name. Cappiello testified that her family felt very uncomfortable and left the pool due to Whitney's behavior.

Later that day, Cappiello testified that she approached Whitney at the apartment building's fence to ask him about lies he was spreading to neighbors. Cappiello called Whitney a motherf---r as she approached him. Cappiello testified that Whitney began screaming at her and she again told Whitney to leave her alone.

That same day, Cappiello testified that she was at the firepit with friends when Whitney—who knew that Cappiello had already contacted law enforcement earlier that day—approached and became verbally aggressive with her. Cappiello called law enforcement a second time following the interaction at the firepit.

Following cross-examination, Whitney argued the petition should be dismissed because Cappiello failed to demonstrate that Whitney's conduct constituted harassment. The district court denied the motion, found Cappiello credible in her testimony, and found that there were "repeated incidents of gestures and intent that have or intend to have substantial adverse effect on the safety and security of [Cappiello]."

The district court issued an HRO following the evidentiary hearing. In the order, the district court described the above encounters and found that Cappiello credibly testified that the unwanted contact makes her feel afraid of Whitney.

Whitney appeals.

DECISION

Whitney argues that the district court abused its discretion by granting the HRO, contending that (1) its factual findings are not supported by the record, and (2) it misapplied the law when it determined that the incidents met the statutory definition of harassment. We address each argument in turn.

I. The district court’s findings were not clearly erroneous.

Whitney challenges two findings as clearly erroneous. We will set aside a district court’s findings only if they are clearly erroneous, giving due regard to the district court’s credibility determinations. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *rev. denied* (Minn. Sep. 29, 2004). A finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations omitted). We view the evidence in the light most favorable to the findings and cannot reweigh the evidence or reconcile conflicting evidence. *Id.* at 221-22.

Whitney challenges the district court’s finding that “[Whitney] was also at the pool and was staring at [Cappiello] and her family, which made her uncomfortable.” Whitney argues that this finding is clearly erroneous because Cappiello did not testify that Whitney’s staring made her uncomfortable, but instead that it made her *family* feel uncomfortable.

Viewing the evidence in the light most favorable to the district court's finding and the whole of Cappiello's testimony, we discern no clear error. Cappiello testified that she was scared of Whitney and that his behavior at the pool made her family uncomfortable, causing Cappiello and her family to leave the pool. Cappiello also testified that Whitney's behavior was aggressive towards her, that it kept happening even though she had asked him to leave her alone, and that he was everywhere she went. When considering the immediate context to Cappiello's testimony about the incident at the pool along with the entirety of Cappiello's testimony, the district court's finding that Whitney's staring made Cappiello uncomfortable is "reasonably supported by the evidence as a whole." *Id.* at 221.

Whitney also challenges, as clearly erroneous, the district court's finding "[t]hat same day, [Whitney] approached [Cappiello] and acted aggressively by yelling and swearing at [her]." Whitney argues that this finding is clearly erroneous because Cappiello testified that she approached Whitney while calling him a motherf---r. Whitney is correct that Cappiello testified that she approached him during the fence incident and insulted him. However, the district court found that Whitney approached Cappiello "[t]hat same day," which was not limited to the fence incident. That finding is supported by the testimony because later that day, Whitney approached Cappiello at the firepit and became "very aggressive[.]" Viewing the evidence in the light most favorable to the finding, we discern no clear error in the district court's finding that Whitney approached Cappiello.

II. The district court did not err by determining that Whitney’s conduct constituted harassment.

Whitney argues that the district court abused its discretion when it determined that the incidents met the statutory definition of harassment. “We review the issuance of a[n] HRO for an abuse of discretion.” *Wilson v. Wilson*, 11 N.W.3d 331, 338 (Minn. App. 2024), *rev. denied* (Minn. Dec. 17, 2024). “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.” *Id.* at 339 (quotation omitted).

A district court may grant an HRO if, in part, “the court finds at the hearing that there are reasonable grounds to believe that the respondent has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(b)(3) (2024). The statute defines “harassment” to include “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) (2024). Harassment is conduct that “goes beyond an acceptable expression of outrage and civilized conduct.” *Kush*, 683 N.W.2d at 846.

Whitney attacks the district court’s findings on individual incidents to argue that none of them—in isolation—meet the statutory definition of harassment.² But the statute defines harassment to include “repeated incidents[.]” Minn. Stat. § 609.748, subd. 1(a)(1).

² Whitney relies on *Beach v. Jeschke*, 649 N.W.2d 502 (Minn. App. 2002) to assert that conduct that is merely inappropriate or argumentative cannot provide the basis for an HRO. *Beach* does not support Whitney’s position because that case concerned a single incident of argumentative behavior. 649 N.W.2d at 502-03. Here, Whitney engaged in repeated incidents after being told to stop and having law enforcement intervene.

As such, we do not review each incident in isolation. Instead, our review requires us to analyze the record as a whole and in the light most favorable to the district court's findings, while giving deference to the district court's credibility determinations. *See Kush*, 683 N.W.2d at 843-44 (stating that we give due regard to the district court's opportunity to judge the credibility of witnesses); *see also Kenney*, 963 N.W.2d at 221 (stating that we view the facts in the light most favorable to the district court's findings). We, therefore, reject Whitney's argument, which isolates and attacks each individual incident.³

The record provides ample support for the district court's finding that Whitney engaged in *repeated* incidents of unwanted acts, words, or gestures that had a substantial adverse effect on Cappiello's safety and security. Cappiello testified that she told Whitney to leave her alone, but a few days later, Whitney confronted Cappiello in the parking lot in an aggressive manner. Cappiello was forced to contact law enforcement after Whitney refused Cappiello's request to leave. After being told to leave her alone, Whitney showed up uninvited at Cappiello's apartment door with a pizza.⁴ Several weeks later, Whitney

³ We also reject Whitney's assertion that Cappiello produced no evidence to support her petition. Cappiello's testimony is evidence. *Black's Law Dictionary* 696 (12th ed. 2024) (defining evidence as including testimony).

⁴ Whitney relies on *Witchell v. Witchell*, 606 N.W.2d 730 (Minn. App. 2000) to support his assertion that the district court clearly erred by finding that his uninvited apartment visit was one of the repeated incidents of harassment. In *Witchell*, we reversed the district court's issuance of an HRO because husband's statements in a visitation notebook, when read in context, did not constitute harassment because husband was responding to wife's comments or addressing his own concerns regarding visitation. 606 N.W.2d at 732. *Witchell* does not support Whitney's position because he asks us to consider only the context he deems relevant and disregard Cappiello's testimony about the context to the uninvited visit. In effect, Whitney's argument asks us to reweigh the testimonial evidence provided to the district court, which we will not do. *Kenney*, 963 N.W.2d at 221-22.

approached Cappiello and her family at the apartment pool, repeatedly bothered them, and made them feel uncomfortable even though Cappiello previously requested that Whitney leave her alone. Cappiello and Whitney later had a confrontation at the fence near the pool during which Cappiello again told Whitney to leave her alone. Cappiello again contacted law enforcement. That same day, Whitney approached Cappiello while she was at the apartment's firepit and, again, became verbally aggressive with Cappiello. Cappiello contacted law enforcement again. Cappiello testified that, "when [Whitney] gets aggressive, he just gets so aggressive he just doesn't know when to stop. And I am scared of him." The district court specifically found Cappiello's testimony to be credible, which we cannot disturb on appeal. *Kush*, 683 N.W.2d at 843-44. Taking Cappiello's entire testimony as true, we discern no abuse of discretion in the district court's decision to issue an HRO in these circumstances.

Affirmed.