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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0893**

Kipper Rhinenold-ray Carlson and o/b/o Minor Children, petitioner,
Respondent,

vs.

Drew Petersen,
Appellant.

**Filed February 25, 2013
Affirmed in part, reversed in part, and remanded
Peterson, Judge**

Ramsey County District Court
File No. 62-HR-CV-12-138

Kipper Rhinenold-ray Carlson, St. Paul, Minnesota (pro se respondent)

Thomas C. Plunkett, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and
Cleary, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

Appellant challenges the harassment restraining order (HRO) issued against him, arguing that the order must be reversed because (1) the HRO was issued based on a single incident, and the statutory grounds relied on by the district court require multiple incidents; (2) the evidence does not support the finding that appellant assaulted

respondent; and (3) even if the HRO was properly granted as to respondent, it must be reversed as to his minor children because appellant had no contact with the children. We affirm in part, reverse in part, and remand.

FACTS

Appellant Drew M. Petersen went to respondent Kipper Rhinenold-ray Carlson's home and demanded to be allowed inside to remove appellant's children, who were staying there. Appellant loudly pounded on the front door, which was locked, and then went to the back door, which was also locked, and kicked it, causing it to break. Respondent called 911 and repeatedly told appellant to leave the property.

Appellant returned to the front yard and began arguing with his wife, who had come outside. Respondent saw appellant push appellant's wife to the ground and begin hitting and kicking her. Respondent and his wife went outside to help appellant's wife, and appellant charged toward them, swore at them, and attempted to enter the house through the open front door. Respondent tackled appellant to prevent him from entering the house. Appellant and respondent wrestled for a while, and then respondent's wife helped respondent restrain appellant until police arrived. When police arrived, they arrested appellant for disorderly conduct.

During the altercation with appellant, respondent sustained multiple cuts on his feet and a deep gash on his shin. The injuries occurred when appellant and respondent ran into some cinder blocks on the front porch. Respondent testified that the injuries occurred as a result of appellant's actions.

Respondent filed a petition for an HRO against appellant on behalf of himself and his two minor children. At the evidentiary hearing on the petition, respondent testified that, after the incident, his children had nightmares and refused to sleep in their own beds.

A referee issued recommended findings and a recommended order granting respondent's petition for an HRO, which became the district court's findings and order upon confirmation by the court. Minn. Stat. § 484.70, subd. 7(c) (2012). The order is a form order on which the district court checked boxes that correspond with the grounds supporting issuance of the HRO. The court checked the boxes for uninvited visits, damaging respondent's property, and breaking and entering into respondent's residence. The court also checked the box for "other" and included a finding that, "[a]s [appellant] attempted to enter [respondent's] home, [respondent] tackled him and both men fought. [Respondent] was assaulted during the fight." The court did not check the separate box that indicates that appellant physically or sexually assaulted respondent.

This appeal followed.

D E C I S I O N

The district court may issue an HRO if the court finds "reasonable grounds to believe that the [actor] . . . engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2012). For purposes of the statute, harassment includes "[a] single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another." *Id.*, subd. 1(a)(1) (2012). "The statute requires proof of, first, objectively unreasonable conduct or intent on the part of the

harasser, and, second, an objectively reasonable belief on the part of the person subject to harassing conduct.” *Peterson v. Johnson*, 755 N.W.2d 758, 764 (Minn. App. 2008) (quotations omitted).

A reviewing court shall not set aside the district court’s findings of fact unless they are clearly erroneous, and due regard shall be given to the opportunity of the district court to judge the credibility of the witnesses. Minn. R. Civ. P. 52.01. Whether the facts as found by the district court satisfy the definition of harassment is a question of law, which we review de novo. *See Peterson*, 755 N.W.2d at 761 (stating that district court’s authority to issue HRO is granted by statute and that statutory interpretation is question of law reviewed de novo). But, ultimately, we review a district court’s issuance of an HRO for an abuse of discretion. *Id.*

Appellant argues that the HRO was issued after a single incident and that the statutory language requires multiple incidents for conduct other than physical or sexual assault. Although the district court did not check the separate box that applies when a petitioner is “physically or sexually assaulted,” the court checked the box for “other” and specifically found that appellant and respondent were in a physical fight and that appellant assaulted respondent during the fight. The district court’s specific finding that appellant assaulted respondent during a physical fight provides sufficient factual support for the single-incident statutory ground for issuing the HRO.

Appellant also argues that the evidence does not support the assault finding because respondent’s injuries resulted from respondent tackling appellant and the two of them falling into cinder blocks. “[T]o prove a physical assault under the first prong of

section 609.748, subdivision 1(a)(1), a petitioner must prove the physical aspects of the statutory definition of assault in chapter 609, i.e., ‘the intentional infliction of or attempt to inflict bodily harm upon another.’” *Peterson*, 755 N.W.2d at 763 (quoting Minn. Stat. § 609.02, subd. 10(2) (2006)). Although respondent initiated the physical confrontation with appellant by tackling him, respondent did so after going outside to help appellant’s wife, whom appellant was physically assaulting, and then tackled appellant to prevent appellant from entering respondent’s house. Appellant wrestled with respondent in resistance to respondent’s effort to prevent appellant from entering the house, and respondent testified that his injuries resulted from appellant’s actions. Respondent’s testimony supports the finding that appellant assaulted respondent during the fight.

Appellant further argues that he did not assault respondent because appellant was attempting to enter the house to get his children and was not attempting to inflict harm on respondent. Intent is generally proved circumstantially by drawing inferences from a party’s words or acts in light of the surrounding circumstances. *State v. Johnson*, 616 N.W.2d 720, 726 (Minn. 2000). The circumstances in this case are that appellant attempted to forcibly enter respondent’s house, physically assaulted his own wife, charged toward respondent and respondent’s wife and swore at them when they went outside, and injured respondent while resisting respondent’s effort to prevent appellant from entering respondent’s house. These circumstances are sufficient to show that appellant intended to inflict harm upon respondent.

For all of these reasons, we conclude that the evidence is sufficient to support the district court's finding that appellant assaulted respondent, and that finding is sufficient to support the issuance of the HRO as to respondent.

Finally, appellant argues that the district court erred in finding harassment against respondent's minor children because the children were in the house and had neither physical nor visual contact with appellant. "The parent . . . of a minor who is a victim of harassment may seek a restraining order from the district court on behalf of the minor." Minn. Stat. § 609.748, subd. 2 (2012). Because appellant did not assault the children, Minn. Stat. § 609.748, subd. 1(a)(1), requires "repeated incidents" to support the issuance of the HRO as to the children. In *Beach v. Jeschke*, this court held that a "two-sentence statement, uttered on one occasion," was insufficient to meet the repeated-incidents requirement. 649 N.W.2d 502, 503 (Minn. App. 2002). Although there was evidence that respondent's children were traumatized by the incident involving appellant, there was no evidence of specific conduct by appellant that caused their trauma. The evidence, therefore, was insufficient to support the repeated-incidents requirement. Accordingly, we reverse the HRO as to the children and remand for entry of an HRO as to respondent only.

Affirmed in part, reversed in part, and remanded.