

CASE NO: A07-2175

State of Minnesota
In Court of Appeals

Bryan Craig Johnson,

Appellant,

vs.

Brent William Peterson, et at.,

Respondent.

RESPONDENT'S BRIEF AND ADDENDUM

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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Statement of the Issue

- I. **Did the trial court abuse its discretion when it issued a harassment restraining order against the Appellant? No**

Trial Court Held: After receiving testimony and exhibits in the matter, the district court found that there are reasonable grounds to believe that Appellant committed specific acts of harassment, including physical assault, uninvited visits, and that he made threats which frightened Respondent Brent Peterson. The trial court addressed Respondent's claims of harassment individually.

Statutes/Cases:

Minn. Stat. 609.748, subd. 1(a)(1) (2002). Minn.Stat. 609.748, subd. 5(a)(3) (Supp. 2003).

Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999)

Roy Matson Truck Lines, Inc. v. Michelin Tire Corp., 277 N.W.2d 361, 362 (Minn. 1979)

Vangsness v. Vangsness, 607 N.W.2d 468, 474 (Minn. App. 2000)

- A. **Did the trial court abuse its discretion when it found Appellant "assaulted" Respondent Peterson on June 3, 2007? No**

Trial Court Held: The trial court relied on the definition of harassment as contained in Minnesota's harassment statute, Minn. Stat. §609.748. The trial court examined the context of the situation of the parties and specifically found that Appellant assaulted Respondent Peterson and that Peterson felt threatened by Appellant. The trial court specifically found Respondent Peterson's testimony regarding the assault to be more credible than that of Appellant.

Statutes/Cases: Minn. Stat. §609.748, subd. 1(a) (1) (2002). Minn. Stat. §609.02, subd. 10(1). Minn. Stat. §609.02, subd. 10 (1). Minn. Rule of Civil Procedure, Rule 61

Sefkow v. Sefkow, 427 N.W.2d 203, 210 (Minn. 1988)

Seidl v. Trollhaugen, Inc., 305 Minn. 506, 508, 232 N.W.2d 236, 239 (1975)

- B. **Did the trial court abuse its discretion when it found Appellant's acts constituted "repeated incidents of**

intrusive or unwanted acts?” No

Trial Court Held: The trial court found that Appellant assaulted Respondent at the Holiday gas station. Even if an assault did not occur, the trial court determined that an incident of threatening behavior did occur and that, combined with Appellant's other harassing conduct, that these acts together constituted harassment. The trial court did not find Appellant's testimony credible.

Statutes/Cases: Minn. Stat. 609.748, subd. 5(a)(3) (2002). Minn. R. Civ. P. 52.01

Kush v. Mathison, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004)

C. Did the trial court abuse its discretion in failing to make a finding that Appellant's acts had a substantial adverse effect on Respondent Peterson? No

Trial Court Held: The trial court specifically held that Respondent Peterson felt threatened by Appellant's behavior and that his testimony was credible. Respondent Peterson also testified that he felt Appellant's behavior was having an adverse effect on his safety, security, and privacy. The trial court specifically held that Appellant's testimony was not credible.

Statutes/Cases: Minn. Stat. 609.748, subd. 5(a) (3) (2002) and subd. 1(a)(1) (2002). Minn. R. Civ. P. 52.01.

In The Residences at the Jewel, LLC v. Tiedeman, 2003 WL 21790466 (Only Westlaw citation available)

Kush v. Mathison, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004)

Statement of the Case

Respondent is satisfied with Appellant's Statement of the Case.

Statement of Facts

Respondent is satisfied with Appellant's Statement of the Facts. However, pursuant to Minnesota Rule of Civil Appellate Procedure 134.01, subd (d)(2), Respondent Peterson requests that the appellate court exercise its discretion and determine that oral argument is unnecessary. Respondent believes that the facts and legal arguments are adequately presented by the briefs and record.

Standard of Review

A district court's issuance of a harassment restraining order is reviewed under an abuse-of-discretion standard. Witchell v. Witchell, 606 N.W.2d 730, 731 (Minn. App. 2000). Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. Minn. R. Civ. P. 52.01.

If the underlying findings of fact made by the district court are undisputed or sustainable (because not clearly erroneous), the district court's "ultimate" findings must be affirmed in the absence of a demonstrated abuse of the district court's discretion. Maxfield v. Maxfield, 452 N.W.2d 219, 221 (Minn. 1990). [A] trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. . . . If there is reasonable evidence to support the trial

court's findings of fact, an appellate court will not disturb those findings." Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999).

"On appeal, we view the record "in the light most favorable to the district court's findings and defer to district court credibility determinations.'" Prahl v. Prahl, 627 N.W.2d 698, 702 (Minn. App. 2001) as cited in In re Bolander v. DeForrest, WL 89362 (Only Westlaw citation available). "We defer to the district court's determination of witness credibility because "it has the advantage of hearing the testimony, assessing relative credibility of witnesses and acquiring a thorough understanding of the circumstances unique to the matter before it."" Hasnudeen v. Onan Corp., 552 N.W.2d 555, 557 (Minn. 1996).

Argument

I. Whether the trial court abuse its discretion when it issued a harassment restraining order against the Appellant.

Appellant is asking the Court of Appeals to reinterpret the factual findings of the district court in hopes that the Court of Appeals will reach a different result and disturb the district court's findings. Appellant cites only testimony from the hearing in this matter that supports his claims and disregards the testimony which supports the court's decision. This is not enough to meet his burden of demonstrating how the district court erred in its decision making. Appellant has filed this appeal citing no legal basis to support his claims and therefore, this appeal should be summarily dismissed without oral argument and attorney's fees awarded to Respondent Peterson.

Even if the Court of Appeals should review the facts of the case and find that the record on appeal might support findings other than those made by the trial court, it does not mean that the court's findings are erroneous. See, Vangsness v. Vangsness, 607 N.W.2d 468, 474 (Minn. App. 2000). "When challenging trial court findings, it's not enough to cite evidence that may contradict the findings... [t]hat the record might support findings other than those made by the trial court does not show that the court's findings are defective." Also, "[i]t is not the province of the appellate courts "to reconcile conflicting evidence." Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn. 1999).

Upon hearing and testimony, a district court may grant a harassment restraining order if (among other factors not relevant to this appeal), "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(a) (3) (2006) (emphasis added). "The [district] court, sitting without a jury, is the sole judge of the credibility of witnesses and may accept all or only part of any witness' testimony." Roy Matson Truck Lines, Inc. v. Michelin Tire Corp., 277 N.W.2d 361, 362 (Minn. 1979). A district court must base its findings in support of a restraining order on testimony and documents properly admitted. Anderson v. Lake, 536 N.W.2d 909, 911-12 (Minn.App.1995).

In this case, both parties presented testimonial evidence at the hearing and the district court found the evidence presented by Respondent Peterson to be

more credible than that of Appellant. The district court specifically stated that Respondent Peterson testified more credibly than Appellant or that Appellant's testimony was not credible (App. 18, 19, and 20). Upon weighing the credibility of the parties and assessing the full context of the situation, the court reasonably granted a restraining order against Appellant based upon Minn.Stat. §609.748, subd. 1(a)(1) and subd. 5 (a) (3).

Appellant cites no legal authority in his brief as to why the Appellate Court should not show great deference to the trial court's determinations of credibility or why the Appellate Court should not view the findings in the light most favorable to the district court's findings. "Error is never presumed—appellant, as the party claiming error, has the burden of demonstrating it". White v. Minnesota Dep't of Natural Res., 567 N.W.2d 724, 734 (Minn. App. 1997), review denied (Minn. Oct. 31, 1997). "The record must be "sufficient to show the alleged errors and all matters necessary for consideration of the questions presented." Truesdale v. Friedman, 267 Minn. 402, 404, 127 N.W.2d 277, 279 (1964). Appellant has failed in his burden of proof.

In this case, the trial court reasonably issued a harassment restraining order against Appellant after balancing the credibility of the witnesses after a full hearing. The court made factual determinations and the record supports those findings. Therefore, the district court's order should not be disturbed.

A. Whether the trial court abused its discretion when it found Appellant assaulted Respondent Peterson on June 3, 2007.

Appellant claims that the district court did not follow the “plain language of the statute” in defining “assault” and that it applied a different, more lax standard. (The court in this case addressed the definition of harassment by addressing the statutory definition of harassment in Minnesota and also referred to the definition of “assault” in Black’s Law Dictionary). Appellant claims that no “assault” occurred because there was no “physical contact” and that the “plain language” of the statute requires that physical contact must occur in order for there to be an assault (See Appellant’s brief, p. 8). Again, Appellant cites no legal authority for his position. Though criticizing the district court’s use of Black’s Law Dictionary definition of assault, Appellant provides no definition that he proposes the court should have applied.

The plain language of Minnesota’s harassment restraining order statute provides, in part, that a harassment restraining order may issue if there has been an act of “physical assault” (not “physical abuse”, as Appellant argues in his brief at p. 8). The plain language of Minnesota’s criminal assault statute provides, in part, that “assault” is defined as “an act done with **the intent to cause fear in another of immediate bodily harm...**” Minn.Stat. §609.02, subd. 10 (1) (2007) (emphasis added). The district court, in its Memorandum (App. 19), cited the Black’s Law Dictionary definition of “assault” as “any willful attempt or threat to inflict injury upon the person of another...” The relevant parts of the both definitions are very similar in that both definitions require the intent to cause

harm. The plain language of the statute does not require "physical contact."

In this case, Appellant claims he was not at the Holiday gas station and therefore, he did not assault Respondent Peterson. However, the district court, after observing both parties and hearing testimony, specifically found Respondent Peterson's testimony more credible than that of Appellant (App. 18 and 19). The court specifically found that Appellant assaulted Respondent Peterson. It also found that Appellant's testimony and explanation were not credible (App. 19 and 20). The court found that Respondent Peterson was blocked or prevented from entering his vehicle so he could leave (App. 18); that Appellant stood in a confrontational way with his chest sticking out and that he threatened to "tear [Respondent] to pieces" (App. 18 and 19); and that Appellant said that "you never know what kind of bad luck a guy can have" (App. 19) and "I know where you live." (App.19). The court also specifically found that Respondent felt threatened by Appellant's behavior (App. 19).

The transcript also reveals Respondent Peterson's description of the assault in detail (T. 22 - 24). He testified at the hearing that Appellant "was unstable, ready to snap, tense" (A25, T22); that he felt intimidated by Appellant's behavior (A25, T22); that Appellant was toe-to-toe with him(App. 26, T. 23); that he felt Appellant was a threat to his security (A31, T28); that he felt that he has to look over his shoulder anywhere he goes (A31, T28); and that he called the police after the incident immediately, thereafter (A27, T24). The court found his testimony credible and the transcript supports the court's findings.

Here, the district court reiterated some of Respondent's testimony in its Memorandum and by doing this, the court simply restated some of Respondent's testimony as findings of fact because it found Respondent Peterson credible and Appellant not credible. The district court properly exercised its discretion in crediting Peterson's testimony, the record on appeal supports its findings, and therefore, its findings are not clearly erroneous. Because the district court judge is the sole finder of fact and the sole judge of a witness's credibility, the district court's decision should be given great deference and should be viewed in the light most favorable to the district court's findings. See Sefkow v. Sefkow, 427 N.W.2d 203, 210 (Minn. 1988) (stating appellate courts defer to district court credibility determinations). State v. Pylka, not Reported in N.W.2d (Minn.App. 2002), citing Seidl v. Trollhaugen, Inc., 305 Min. 506, 508, 232 N.W.2d 236, 239 (1975) (stating where resolution is based on assessment of credibility of witnesses whose demeanor can only be observed by the fact finder, appellate court is obligated to affirm).

Finally, even if the district court did err in applying the Black's Law Dictionary definition of assault, this does not mean the findings of the court are defective and must be reversed. In defining physical assault, the district court acted within the "limits set out by the legislature." Katz v. Katz, 408 N.W.2d 835 (Minn. 1987) in giving the words their "plain and ordinary meaning." State by Beaulieu v. RSJ, Inc., 552 N.W. 2d 695, 701 (Minn.

1996). Because the record on whole supports the district court's findings, this is harmless error. Minnesota Rule of Civil Procedure 61 provides that:

"No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

Therefore, even if the court erred in its definition of "assault", the court still found that an incident of threats and intimidation did occur, and these, combined with the court's other detailed findings that Appellant committed other intrusive or unwanted acts, words, or gestures that had a substantial adverse effect on Respondent Peterson's privacy and safety, support the issuance of an harassment restraining order. Most importantly, however, the court did not find Appellant's testimony at hearing credible.

B. Did the trial court abuse its discretion when it found Appellant's acts constituted "repeated incidents of intrusive or unwanted acts?"

The District Court specifically found that Appellant committed repeated incidents of intrusive acts (App. 19, 20 - 21). It referenced the incident at the gas station, Appellant's unnecessary call to the police and "search" of Respondent Peterson's vehicle, and Appellant's call to social services. Again, within the context of the testimony given throughout the entire hearing, and within the

context of Appellant's ongoing behavior, the district court did not find Appellant's testimony or account of events credible. (App. 18, 19, and 20). The court, in its Memorandum, discussed and summarized the factual events as they were testified to and found Respondent Peterson's articulated request for a Harassment Restraining Order reasonable.

In addition, there are several references in the court's Memorandum that specifically state why Appellant's testimony was not credible, but this does not mean that they are exhaustive. The testimony as dictated in the entire court transcript also illuminates why Appellant is not credible. As the sole arbiter of credibility, the court made its decision accordingly. Appellant cannot expect that the court will recite and analyze each and every piece of testimony it hears in its subsequent order and/or memorandum.

Therefore, given the totality of the testimony at trial and the context of Appellant's ongoing harassing behavior, and because "[t]he determination of what constitutes an adequate factual basis for a harassment order is left to the discretion of the district courts", Kush v. Mathison, 683 N.W.2d 841, 843 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004), the district court should be given great deference in its determination that Appellant harassed Respondent Peterson.

C. Whether the trial court abused its discretion in failing to make a finding that Appellant's acts had a substantial adverse effect on Respondent Peterson.

The district court **did** find that Appellant's actions had a substantial adverse effect on Respondent Peterson's safety, security, and privacy. (App. 16 - 19). The court explicitly found that Appellant assaulted Respondent Peterson. (App. 16 - 21). It also specifically found that Appellant made threats to Respondent, threatening to "tear [him] to pieces" (among the other threats mentioned above), that he frightened Respondent Peterson with threatening behavior, and that he made an unnecessary call to the police on Respondent regarding the absence of a car seat, after Appellant was specifically told that no laws were being broken and a car seat was not necessary, and that he made another call on Respondent to social services.

Finally, the district court heard testimony regarding Appellant's conduct throughout the court hearing and it subsequently decided that Appellant was not credible and issued the harassment restraining order. The harassment/restraining order statute requires only that the court may "grant a restraining order if 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(a)(3). The statute does not require particularized findings of every element of the statute as Appellant suggests, only that the court finds after a hearing that there are reasonable grounds.

Regardless, the issuance of a harassment restraining order itself is an explicit finding that Appellant's actions had a substantial adverse effect upon Respondent Peterson. Not only is just checking the boxes on the Harassment

Restraining Order form sufficiently factual, but the court also explained its reasoning by attaching a legal memorandum (App. 18). “It is sufficient if the district court finds the respondent's actions “had, or were intended to have, a substantial adverse effect on the safety, security, or privacy” of the petitioner. Kush, at 844. Similar to the district court in In The Residences at the Jewel, LLC v. Tiedeman, 2003 WL 21790466 (Only Westlaw citation available), the district court in this case used the preprinted “Order After Harassment Hearing” form (App. 16 - 17). In Jewel, the court found that use of the form is justified on practical grounds of judicial economy and that the boxes on the form are marginally specific enough to serve as particularized findings. *Id.* at 34. Nevertheless, by reiterating and quoting some of Respondent Peterson’s testimony as findings of fact in its legal memorandum, the court explicitly found that Respondent Peterson felt threatened by the acts of Appellant and that he felt threatened in his safety, security, and privacy.

Conclusion

Appellant provides no legal authority or support in the appellate record to warrant review of the district court’s decision. Therefore, this appeal should be summarily dismissed and Respondent Peterson awarded his appellate attorney’s fees. Appellant has failed in his burden of showing that the district court abused its broad discretion. The record on appeal, particularly the transcript, reveals that the district court questioned the parties in detail. The district court held a full

hearing, listened to all the testimony, made its credibility determinations, and after considering all of the evidence in the case, exercised its broad discretion and reasonably found that Appellant harassed Respondent Brent Peterson. The district court's decision should be given great deference and the decision should be affirmed.

Respectfully Submitted,

Dated: 3/3/08

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