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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1169**

In re the Matter of:

Michael Alexander Mikhail, petitioner,  
Respondent,

vs.

Salma Ghanem Mikhail,  
Appellant.

**Filed July 8, 2008  
Affirmed  
Kalitowski, Judge**

Olmsted County District Court  
File No. 55-C5-02-002177

Lawrence Downing, Amber Lawrence, Downing, Dittrich & Lawrence, 330 Wells Fargo Center, 21 First Avenue Southwest, Rochester, MN 55902 (for respondent)

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Considered and decided by Peterson, Presiding Judge; Toussaint, Chief Judge; and Kalitowski, Judge.

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

On appeal from the district court's grant of a harassment restraining order, appellant Salma Ghanem Mikhail argues that the record lacks the required evidence of repeated incidents of intrusive or unwanted acts. We affirm.

### DECISION

The parties dispute what standard of review applies here. Generally, we review a district court's grant of a harassment restraining order under an abuse-of-discretion standard. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000). But relying on *Griese v. Kamp*, appellant argues that because the district court's decision was based solely on affidavits, which are available for examination by this court, de novo review is appropriate. *See* 666 N.W.2d 404, 407 (Minn. App. 2003), *review denied* (Minn. Sept. 24, 2003). We disagree.

The holding in *Griese* involved review of a denial of an evidentiary hearing in a child-custody case. *Id.* at 405. There is no authority to support appellant's contention that the *Griese* holding should apply to a district court's issuance of a restraining order. *See Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004) (applying an abuse-of-discretion standard), *review denied* (Minn. Sept. 29, 2004); *see also Witchell*, 606 N.W.2d at 731. Moreover, the Rules of Civil Procedure provide that a district court's findings of fact, whether based on oral or documentary evidence, will not be set aside unless clearly erroneous. Minn. R. Civ. P. 52.01. Accordingly, we review the district

court's findings of fact for clear error and its grant of a restraining order for an abuse of discretion.

A district court may issue a restraining order if it finds “reasonable grounds to believe that the [actor] has engaged in harassment.” Minn. Stat. § 609.748, subd. 5(a)(3) (2006). “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, regardless of the relationship between the actor and the intended target.” Minn. Stat. § 609.748, subd. 1(a)(1) (2006).

Appellant argues that there was insufficient evidence to support the district court's conclusion that appellant harassed respondent. Appellant maintains that the record lacks evidence of “repeated incidents” of harassment because respondent's description of the voicemails and faxed messages that appellant left at respondent's father's residence was hearsay and violated the “best evidence rule,” and therefore should not have been considered by the district court. But because these arguments were first raised in appellant's motion for amended findings or a new hearing and appellant failed to object to the admission of the evidence during the original motion hearing, the district court properly did not address them. Likewise we conclude that appellant has waived those issues. *See Allen v. Central Motors, Inc.*, 204 Minn. 295, 299, 283 N.W. 490, 492 (1939) (finding that an issue first raised in a motion for amended findings was raised “too late.”).

Because we reject appellant's arguments concerning respondent's affidavit testimony, we conclude that the record contains sufficient evidence that appellant engaged in multiple incidents of harassment. The district court considered three specific

incidents: a March 2004 letter asking respondent to contact his grandmother, a June 2006 letter, and the voicemails and faxed messages. Repeated incidents of harassment may involve “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.” Minn. Stat. § 609.748, subd. 1(a)(1).

Although the district court appears to have considered the March 2004 letter an incident of harassment, it did not make specific findings that the letter was intrusive or unwanted, or that it had a substantial adverse effect on respondent’s safety, security, or privacy. But the March 2004 letter was not necessary to the district court’s conclusion that appellant engaged in repeated incidents of harassment. In light of the steps respondent took to end his relationship with appellant, the record supports a finding that both the June 2006 letter with images of respondent’s grandmother and the messages sent to respondent’s father were unwanted or intrusive.

Additionally, the record contains sufficient evidence that the messages had a substantial adverse effect on respondent’s safety, security, or privacy. The letter respondent received in June 2006 contained several statements that a reasonable person would find distressing:

Your relentless rejection of your grandmother even at the time of her death is nothing short of outrageous. Those who knew you in Toledo have expressed shocked disbelief at the hardness of your heart [ ]

...

This vicious treatment of a grandmother who gradually gave up hope that you would contact her as her health deteriorated over the past two years, who lay bedridden and grieving at being ostracized by her grandchildren for nothing she had done, this is an aspect of the evil rooted in your soul [ ] that will forever have repercussions within your own accursed [life].

The district court properly found that the June 2006 letter and the photos of respondent's dying grandmother were intrusive or unwanted, and were "intended to have, and did in fact have, a substantial adverse effect on the privacy of" respondent.

In addition, the voicemail and faxed messages included (1) profanity against respondent and his sister for their refusal to be involved in their parents' divorce proceedings; (2) profanity against respondent and his sister for seeking to prevent appellant from communicating with them; (3) an offer to include respondent in appellant's will if he would testify against his father; (4) a reminder that the 2003 restraining order had expired; (5) a statement that appellant "has the right to force [appellant] to listen" and that she "will not be ignored"; (6) threats to punish respondent for refusing to do what appellant wanted; (7) threats against respondent's children; and (8) a statement that appellant "will spend [her] last dime . . . even after [her own] death, to ruin" respondent and his family. The district court properly rejected appellant's argument that the messages sent to respondent's father did not constitute harassment because respondent received them at his father's residence in Florida. The statutory definition of "harassment" does not require that there be direct contact or communication between the actor and the intended target. *See* Minn. Stat. § 609.748, subd. 1(a)(1).

We conclude that the district court did not err in finding that appellant engaged in repeated incidents of harassment. Accordingly, it was within the district court's discretion to grant respondent a harassment restraining order against appellant.

**Affirmed.**