

*This opinion is nonprecedential except as provided by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
A22-0162**

Kristen M. Egan,
Respondent,

vs.

Victor Wright,
Appellant.

**Filed December 5, 2022
Reversed and remanded; motion denied
Slieter, Judge**

Dakota County District Court
File No. 19AV-CV-21-1612

Patrick J. Boley, Eckberg Lammers, P.C., Stillwater, Minnesota (for respondent)

John Kaschins, Minneapolis, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant challenges the district court's inclusion of a firearm-prohibition and firearm-surrender provision in the harassment restraining order (HRO) issued against him. Appellant does not challenge the district court's decision to issue the HRO. Because the HRO statute does not authorize a firearm prohibition or firearm surrender as an available remedy, we reverse that provision of the HRO and remand to the district court. The HRO

issued against appellant, minus the firearm-prohibition and firearm-surrender provision, remains in effect.

FACTS

Appellant Victor Wright and respondent Kristen Egan worked together at a grocery store. Wright left that job in June 2021. During the weeks following his departure, Wright messaged Egan, but Egan did not respond. Wright continued to contact Egan even without responses from her. Wright also visited the grocery store.

In July 2021, Egan's boyfriend contacted Wright and asked Wright to stop contacting Egan. However, Wright continued to contact Egan after the July request to stop contact.

In September 2021, Egan successfully petitioned the district court for an *ex parte* HRO against Wright pursuant to Minn. Stat. § 609.748 (2020). Wright timely requested a hearing. The district court held a hearing in October 2021 and granted a two-year HRO against Wright.

The district court explained that the HRO prohibits Wright from "having any contact with Ms. Egan whatsoever." The district court also stated the following:

THE COURT: Do not possess any firearms or ammunitions while this order is in effect. Do you have a firearm?

WRIGHT: Yes.

THE COURT: You are to contact Burnsville Police, the police department in your city, let them know of this order, and follow their instructions regarding giving up that firearm. And you are to show proof of that within two weeks from today's date. Do you understand that?

WRIGHT: Yes.

THE COURT: Do you have any questions about this order?

WRIGHT: So giving up the firearms, how long are they --

THE COURT: While this order is in effect. So that's for two years. And what do you do with your firearms? How many firearms do you have?

WRIGHT: I have two handguns and a rifle.

THE COURT: Okay. And how do you use those -- what do you use those handguns for?

WRIGHT: Target shooting.

THE COURT: Okay.

WRIGHT: I've had -- I've had handguns ever since 2012.

THE COURT: Okay. Well, at this point, you cannot have one until 2023. Do you understand that?

WRIGHT: Yes.

The district court issued the HRO utilizing the form, "Order Granting HRO After Hearing" and added, under the form's "Other" category: "no possession of firearm and follow the Burnsville Police Department protocol for getting rid of the weapons -- two handguns and a rifle."

Wright subsequently moved the district court to remove the firearm-prohibition and firearm-surrender provision (firearm-prohibition provision) from the HRO which Egan opposed. The district court conducted a hearing and denied the motion. Wright appeals.¹

DECISION

Interpretation of the statute authorizing district courts to grant HROs is a question of law that we review *de novo*. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). However, we review a district court's decision to grant an HRO for abuse of discretion. *Id.* "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

¹ Wright appealed from the December 8, 2021 order denying Wright's motion, and we construed the appeal as taken from the original October 14, 2021 order granting the HRO pursuant to *Huso v. Huso*, 465 N.W.2d 719, 720-71 (Minn. App. 1991).

logic and the facts on record.” *Woolsey v. Woolsey*, 975 N.W.2d 502, 506 (Minn. 2022) (quoting *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022)).

In this appeal, we focus on whether the district court misapplied the HRO statute, and if it did, we reverse the district court’s determination as an abuse of discretion. *See id.* at 510-11.

An HRO is a form of statutory relief that provides a harassment victim with the ability to “seek a restraining order from the district court in the manner provided in this section.” Minn. Stat. § 609.748, subd. 2. An HRO proceeding is not a typical civil matter and, instead, is considered a “special proceeding.” *Fiduciary Found., LLC ex rel. Rothfus v. Brown*, 834 N.W.2d 756, 761 (Minn. App. 2013), *rev. denied* (Minn. Sept. 17, 2013). A special proceeding exists when “the law confers a right, and authorizes a special application to a court to enforce it.” *Id.* (quoting *Schuster v. Schuster*, 87 N.W. 1014, 1015 (Minn. 1901)).

The relevant portion of the HRO statute authorizes two remedies which the district court may order:

- (a) The court may issue a restraining order that provides any or all of the following:
 - (1) orders the respondent to cease or avoid the harassment of another person; or
 - (2) orders the respondent to have no contact with another person.

Minn. Stat. § 609.748, subd. 5(a)(1)-(2). The statute is silent as to the district court’s authority to prohibit possession of firearms or require surrender of firearms as part of an HRO.

Wright argues that the statute’s silence regarding a firearm-prohibition provision means the district court is without authority to issue such a provision and is, instead, limited to the two remedies specified in the HRO statute. Egan argues that the district court’s authority pursuant to Minn. Stat. § 609.748 is broad and allows for a range of remedies not limited by the statute. We agree with Wright.

The goal of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Christianson v. Henke*, 831 N.W.2d 532, 536 (Minn. 2013) (quotations omitted). When conducting statutory interpretation, the first step is to determine whether a statute’s language is ambiguous. *Id.* “A statute is only ambiguous if its language is subject to more than one reasonable interpretation.” *Id.* at 537. If the statute is unambiguous, then a court should “enforce the language of the statute and not explore the spirit or purpose of the law.” *Id.* (quotation omitted); *see* Minn. Stat. § 645.16 (2020).

We agree with the parties that Minn. Stat. § 609.748, subd. 5(a)(1)-(2), is unambiguous. Section 609.748, subdivision 5(a)(1)-(2), is silent as to the district court’s authority to prohibit possession of firearms as part of an HRO. And a statute’s silence “does not render a statute ambiguous unless the silence renders the statute susceptible to more than one reasonable interpretation.” *Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) (citing *In re Welfare of R.S.*, 805 N.W.2d 44, 51 (Minn. 2011)). When considering silence, the “task . . . is to ‘resolve whether the statutory construction issue . . . involves a failure of expression or an ambiguity of expression.’” *Id.* (quoting *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010)). Courts cannot add to a statute “what the legislature purposely omits or inadvertently overlooks.” *Ullom v. Indep. Sch. Dist.*

No. 112, 515 N.W.2d 615, 617 (Minn. App. 1994) (quotation omitted). Therefore, “[w]hen a question of statutory construction involves a failure of expression rather than an ambiguity of expression, courts are not free to substitute amendment for construction and thereby supply the omissions of the legislature.” *Rohmiller*, 811 N.W.2d at 590 (quoting *Genin v. 1996 Mercury Marquis*, 622 N.W.2d 114, 117 (Minn. 2001)).

The silence regarding firearm prohibition as an available remedy in the HRO statute is the former, a failure of expression. *See id.* This is in contrast to an order for protection (OFP), also a creature of statute, that expressly authorizes district courts to prohibit an abusing party from “possessing firearms for the length the [OFP] is in effect.” Minn Stat. § 518B.01, subd. 6(g) (2020). Therefore, the district court lacked authority to include the firearm provisions in the HRO based upon the unambiguous language of Minn. Stat. § 609.748, subd. 5(a)(1)-(2), which does not authorize this remedy.

Our court has previously ruled that a district court is limited to the authority explicitly identified in the HRO statute. In *Roer v. Dunham*, we held that a district court did not have authority to extend an existing HRO beyond two years from the effective date of the restraining order because, in part, the statute is silent about the court’s authority to do so. 682 N.W.2d 179, 181-82 (Minn. App. 2004). Our court relied on the same reasoning we apply here. Specifically, the “statutory rule of construction that this court cannot add language that is not present in the statute or supply what the legislature purposely omits or inadvertently overlooks.” *Id.* at 181 (citing *Ullom*, 515 N.W.2d at 617).

Egan argues that our court has previously affirmed HROs that contain a range of remedies going beyond simple no-contact orders. Therefore, Egan claims, the district court

did not here err by including its firearm-prohibition provision. To support this argument, Egan directs us to *Welsh v. Johnson*, in which an HRO provision that prohibited the harassing party from coming within two blocks of the petitioner’s residence was considered “permissible” restriction. 508 N.W.2d 212, 216 (Minn. App. 1993). We are not persuaded.

First, *Welsh* did not contradict the rule of statutory construction that we may not add words to a statute which includes silence of expression. *See* 508 N.W.2d at 214-16; *Rohmiller*, 811 N.W.2d at 590. Second, defining a geographic scope is a logical, and arguably essential, component of an order for no contact—which is one of the two remedies the legislature specifically authorized. A firearm prohibition is not an authorized remedy in the HRO statute.²

The HRO statute does not authorize the district court to include a firearm-prohibition provision in the HRO issued against Wright. Therefore, including such a provision in the HRO was a misapplication of the law, and the district court abused its discretion by including the firearm-prohibition provision. *See Woolsey*, 975 N.W.2d at 510-11. Though Egan makes arguably reasonable policy assertions about the discretionary authority of a district court pursuant to the statutorily created HRO special proceeding, we are “limited to identifying errors and then correcting them.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (citations omitted); *cf. Leifur v. Leifur*, 820 N.W.2d 40, 43 (Minn.

² Egan also directs us to *Baker v. Baker*, to argue that the district court has broad powers to order injunctive relief. 494 N.W.2d 282, 286 (Minn. 1992). However, *Baker* did not consider the HRO statute and instead construed the Domestic Abuse Act. *See* Minn. Stat. § 518B.01 (1990). Further, *Baker*, 494 N.W.2d at 286-88, did not contradict the rule of construction later articulated in *Rohmiller*, 811 N.W.2d at 590, which prevents us from adding language authorizing relief where the HRO statute is silent.

App. 2012) (noting a party’s “meritorious policy arguments” supporting a proposed reading of a statute but rejecting that proposed reading of the statute because “this court may not disregard unambiguous statutory language”). Because we are an error-correcting court, we are “without authority to change the law.” *Lake George Park, L.L.C. v. IBM Mid-Am. Emps. Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998), *rev. denied* (Minn. June 17, 1998). Therefore, we reverse and remand to allow for the removal of the firearm-prohibition provision in the HRO because the district court improperly applied the law. *See Woolsey*, 975 N.W.2d at 510-11. The HRO remains in effect, and we remand to the district court to vacate the firearm-prohibition provision.³

Reversed and remanded; motion denied.

³ Wright filed a motion to strike Egan’s addendum filed on appeal and the portions of Egan’s brief citing to the addendum because they are allegedly outside the appellate record. Wright also moved to strike portions of Egan’s brief because they are not supported by the record. We deny the motion to strike as unnecessary in light of our resolution of this appeal.