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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-2321**

Ann Marie Holland,  
petitioner,  
Respondent,

vs.

Neng Por Yang,  
Appellant.

**Filed August 10, 2010  
Affirmed  
Willis, Judge\***

Scott County District Court  
File No. 70-CV-09-27229

Corey J. Ayling, McGrann Shea Carnival Straughn & Lamb, Chtd., Minneapolis, Minnesota  
(for respondent)

Neng Por Yang, Minneapolis, Minnesota (pro se appellant)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and Willis,  
Judge.

**UNPUBLISHED OPINION**

**WILLIS, Judge**

In this pro se appeal from a second harassment restraining order (HRO) against him,  
appellant claims that (1) the evidence was insufficient to support issuance of the HRO or to

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\*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

extend it for a period longer than two years; (2) his due-process rights were violated because he was not informed of his alleged right to counsel; and (3) he was prejudiced by the district court's issuance of a temporary restraining order (TRO) without a hearing during pendency of the second HRO proceeding. We affirm.

## **FACTS**

Appellant Neng Por Yang first encountered respondent Ann Marie Holland on January 12, 2007, when she served as a court reporter at a deposition that Yang scheduled in an unrelated action. From that single 15-minute contact, Yang arrived at the mistaken belief that Holland was not a licensed court reporter but was actually a government spy who was engaged in covert surveillance of him. The record shows that from November 29, 2004, to November 16, 2005, Yang had been involuntarily committed as a mentally ill person because of delusional behavior.

Soon after the deposition, Yang initiated an action for invasion of privacy against Esquire Deposition Services, the company for which Holland worked as an independent contractor. The district court granted summary judgment against Yang, concluding that the action was meritless. Yang also sent letters of inquiry to attorneys, agencies, and professional associates of Holland's, seeking Holland's address or last known whereabouts, in some cases asking whether she had done any work for them or suggesting that she was an imposter or spy. In some instances, the letters revealed Holland's social-security number, as well as her unlisted address and telephone number. On the morning of November 15, 2007, Holland discovered the letter "A" written on her car window in what she and the Shakopee

police believed to be blood while the car was parked at her home. Holland petitioned for an HRO.

On November 17, 2007, the district court issued an HRO against Yang, finding that Yang had “[f]ollowed, pursued, or stalked” Holland, “[m]ade uninvited visits” to her, “[f]rightened [her] . . . with threatening behavior,” and “interfer[ed] with her employment.” The HRO prohibited Yang from having any contact with Holland at her home or her various places of employment and ordered him not to have communication with third parties “concerning untrue allegations that have [a] harassing impact on [Holland].” The HRO remained in effect for a period of two years, until November 16, 2009.

Issuance of the first HRO neither altered Yang’s misconceptions nor deterred his efforts to find support for them. While the first HRO was in effect, in September and October 2008, Yang contacted the City of Minneapolis, the Minnesota Department of Health, the Office of the State Registrar, the Minnesota Department of Commerce, the Dale Newmann Reporting Agency, and the Shakopee Police Department, seeking Holland’s former and current addresses or, in the case of the Dale Newmann Reporting Agency, demanding to know if she had worked there. According to Holland, Yang contacted the Shakopee Police Department 50 times and the Scott County Court Administration at least 30 times to seek information about her. Yang also had earlier initiated a civil action against Holland and civil actions against two court-reporting firms with which she had worked, and he served subpoenas in those actions in 2008, during the term of the HRO, even after the actions had been dismissed or otherwise summarily resolved against Yang. On October 27, 2008, Yang attempted to file in the district court a photograph of a woman he believed to be

Holland as an exhibit in his harassment case file. On March 19, 2009, Yang moved to vacate the first HRO, claiming that it had been obtained by fraudulent means because Holland was not the person she claimed to be; the district court denied the motion on June 2, 2009. On September 15, 2009, the district court denied Yang's motion for an order directing the Minnesota Department of Public Safety to provide him with photos of Holland and her attorney. On October 28, 2009, long after Yang's civil case against Holland was dismissed, Yang served a subpoena on the district-court judge who presided over that action.

Yang's conduct placed Holland in fear for her own safety. She sold her home and changed residences four times to evade Yang. On the evening of September 27, 2008, Holland heard someone outside her window at her parents' home, where she was staying temporarily, and the next morning she discovered that one of her car tires had been slashed. The next day, Holland's parents received a letter from Yang that asked for her whereabouts. According to Holland, Yang obtained her parents' address when, in response to a "subpoena," the Minnesota Secretary of State's office released information to Yang from Holland's application for a notarial commission submitted years earlier that included the address.

On November 13, 2009, Holland petitioned for a second HRO, seeking a longer period of restraint because of Yang's continuing harassment. The district court issued a TRO on that day, pending its decision on the second HRO petition. The district court held a hearing on the HRO petition on November 30, 2009, and during the hearing Yang sought Holland's current address, flatly denied that she was a court reporter, and claimed that she

was not the woman who appeared at the January 17, 2007 deposition. The district court issued a second HRO on December 16, 2009. The second HRO prohibits Yang from contacting or harassing Holland and prohibits him from contacting Holland's current or former employers or "any agency, organization, law firm, or business, for the purpose of conveying or gathering information about" Holland. The second HRO remains in effect for a period of 50 years.

After issuance of the second HRO, Yang moved the district court for appointment of a public defender; the district court denied the motion. Yang appealed from the issuance of the HRO and argues on appeal the denial of his motion.

## D E C I S I O N

### **1. The evidence supports both the issuance of and the duration of the second HRO.**

Yang challenges the sufficiency of the evidence to support issuance of the second HRO and claims that, in any event, the term of that HRO should have been limited to two years. A district court may grant an HRO if "the court finds at the hearing that there are reasonable grounds to believe that [a person] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2008). "Harassment" is defined as "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) (2008). This court reviews the district court's issuance of an HRO for an abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000). The district court's factual findings will not be set aside unless they are clearly erroneous, with due regard being given to the district court's opportunity to evaluate witness credibility.

*Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

In challenging the district court's issuance of the HRO, Yang persists in believing his delusional version of the facts, labeling Holland's testimony "fraudulent" and "perjured." In so doing, Yang ignores fundamental principles relating to appellate review of a district-court decision; namely, that credibility determinations are for the fact-finder and that this court defers to a district court's factual findings unless they are clearly erroneous. *See* Minn. R. Civ. P. 52.01 (stating that appellate courts give due regard to the district court's opportunity to judge witness credibility and will not reverse factual findings unless they are clearly erroneous); *Citizens Nat'l Bank of Madelia v. Mankato Implement, Inc.*, 441 N.W.2d 483, 485 (Minn. 1989).

The record is replete with evidence to support issuance of the second HRO. While the first HRO was still in effect, Yang repeatedly contacted third parties to obtain information about Holland and claimed that she was an imposter. The third parties included her relatives and former employers, government agencies, police departments, and courts. This evidence was sufficient to support issuance of the second HRO. *See* Minn. Stat. § 609.748, subd. 5(a)(3).

Yang also claims that the district court erred by imposing an HRO that is effective for a period of 50 years. Minn. Stat. § 609.748, subd. 5(a)(3), permits a district court to grant relief "for a period of up to 50 years" "[i]f the court finds that . . . the respondent has violated a prior or existing restraining order on two or more occasions[.]" The district court found, and the record substantiates, that Yang violated the original HRO

on far more than two occasions by harassing [Holland] through inappropriate letters to her business associates, disseminating her social security number, abusing the legal process to discover information [Holland] sought to keep private, and by slashing her tire. Based on the duration and extent of the harassment in this matter, and based on the Court's observations of [Yang's] demeanor toward [Holland] in the courtroom, the maximum statutory duration of fifty years is appropriate for this order.

We agree with the district court's conclusion that the duration of the HRO is justified by Yang's conduct. He clung to his view of the facts, despite factual findings by various district courts that his beliefs were false and despite rulings by those courts that should have convinced Yang to refrain from further contact with Holland. Because of the seriousness of Yang's conduct, we conclude that the district court did not abuse its discretion by issuing an HRO of 50 years' duration. This HRO is subject to district court review in five years, when Yang may seek vacation or modification of the HRO if he has abided by its terms. *See id.*, subd. 5(c) (2008).

**2. Yang had no right to appointed counsel in this civil action.**

Yang next claims that he was denied his constitutional due-process rights by the district court's refusal to appoint a public defender to represent him. Although he did not raise this issue until after initiating this appeal, he claims that if he had been properly represented by counsel, he would have had a fair opportunity to be heard, would have been taken seriously by the district court, and could have exposed Holland's "true" identity.

In certain criminal proceedings and under certain circumstances, a district court must appoint counsel for a defendant. *See* Minn. R. Crim. P. 5.04 (2010). But generally civil proceedings do not create a right to counsel. *Watson v. Moss*, 619 F.2d 775, 776 (8th Cir.

1980) (“There is no constitutional or statutory right for an indigent to have counsel appointed in a civil case.”); *see Maietta v. Comm’r of Pub. Safety*, 663 N.W.2d 595, 600 (Minn. App. 2003), *review denied* (Minn. Aug. 19, 2003). *But see* Minn. Stat. § 260C.163, subd. 3 (2008) (permitting appointment of counsel in child-protection proceedings as authorized by statute). Because this is a civil matter, the district court did not err by denying Yang’s request for the appointment of counsel.

**3. No evidentiary hearing was required before the issuance of the TRO.**

On November 13, 2009, when Holland petitioned for the second HRO, the district court issued a TRO that remained in effect until the court’s ultimate decision on the second HRO petition on December 16, 2009. Yang argues that he was prejudiced because the district court did not hold an evidentiary hearing before issuing the TRO. Issuance of a TRO without a hearing is permissible under Minn. Stat. § 609.748, subd. 4 (2008), if the petitioner is subject to “an immediate and present danger of harassment . . . .” In granting the TRO here, the district court found that Holland’s petition established that she was in sufficient “immediate and present danger of harassment to justify temporary relief.” We conclude that the district court’s decision to issue a TRO without a hearing was not an abuse of discretion. *See Carl Bolander & Sons Co. v. City of Minneapolis*, 502 N.W.2d 203, 209 (Minn. 1993) (reviewing grant of TRO under abuse-of-discretion standard of review).

**Affirmed.**