STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0590

Katie B. Jankovsky and o/b/o the minor children, petitioner,
Respondent,

vs.

Norman Anderson, et al.,
Appellants.

Filed December 10, 2012
Affirmed
Kalitowski, Judge

Scott County District Court
File No. 70-CV-11-28198

Katie B. Jankovsky, St. Paul, Minnesota (pro se respondent)

William C. Peper, Peper Law Offices, P.C., Minnetonka, Minnesota (for appellants)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellants Norman and Sandra Anderson argue that the district court abused its discretion by issuing a harassment restraining order forbidding them to have contact with their former daughter-in-law, respondent Katie Jankovsky. We affirm.

D E C I S I O N

Appellants' son, Steven Anderson, and respondent were married until September 2010, and are the parents of two minor children. Under the terms of the dissolution judgment and decree, Steven Anderson has supervised parenting time every other weekend and two evenings per week. Appellants supervise Steven Anderson's parenting time. Because respondent has an order for protection (OFP) against Steven Anderson, appellants have acted as intermediaries with respondent for the purpose of exchanging the children.

The district court may issue a harassment restraining order (HRO) if the court finds "reasonable grounds to believe that the [actor] . . . engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2010). For purposes of the statute, 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." *Id.*, subd. 1(a)(1) (2010). "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) (quoting *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006)).

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. *Peterson*, 755 N.W.2d at 761. But we review a district court's issuance of an HRO for an abuse of discretion. *Witchell v. Witchell*, 606 N.W.2d 730, 731 (Minn. App. 2000).

In December 2011, respondent filed a petition for an HRO against appellants. At the evidentiary hearing, respondent provided testimony concerning appellants' conduct during exchanges of the children on April 10, 2011, and December 22, 2011, that she believed constituted harassing conduct. Respondent also testified that she has a Safe at Home address and that appellants had each individually asked her orally during the exchanges of her children for her confidential address. The district court found that there were reasonable grounds to believe that appellants engaged in harassment of respondent and issued an HRO. The court found that appellants frightened respondent with the following threatening behavior: "attempted to keep [respondent] from getting her children, took photographs of [respondent] and children, asked for [respondent's] confidential address, [and] threatened repercussions for [respondent's] conduct."

Appellants challenge the district court's factual finding that they asked respondent for her confidential address. Appellants argue that respondent testified that she obtained the Safe at Home address on December 22, 2011, and, therefore, appellants' requests for respondent's home address prior to that date were not requests for a confidential address. But the transcript does not reflect that respondent testified that she obtained a Safe at Home address on December 22. The court asked respondent to explain the specific conduct by appellants that she believed was a basis for an HRO:

Q: . . . I need to start with specific instances of conduct —
A: Okay. Okay. When they were first coming —
Q: Not that precedes all of this.
A: Sure. No.
Q: But what has happened recently that requires you —
A: [Appellants] tried to follow me home from a drop-off.
Q: When did it happen?
A: Their attorney—or my ex-husband's attorney has been trying to get my address. I went and got a Safe at Home address. That happened the 22nd of December.
Q: December 22nd, you met at Southdale?
A: No. . . . We met at Jerry's Foods.

Respondent's statement, "That happened the 22nd of December," identifies the date of appellants' conduct during one of the exchanges of the children that she believed supported her petition for an HRO, not the date she obtained a Safe at Home address. Appellants point to no other evidence in the record establishing when respondent obtained a Safe at Home address. Thus, the district court's finding that appellants asked respondent for her confidential address is not clearly erroneous.

Appellants also challenge the district court's conclusion of law that they engaged in harassment of respondent. At the evidentiary hearing, respondent testified that on April 10, she telephoned appellants to remind them to meet at Jerry's Foods because that day's exchange was the first since the location change. Respondent explained to the district court that the OFP stipulated Southdale Center as the exchange location, but at a hearing concerning the divorce in March 2011, at which appellants were not present, the district court ordered that Jerry's Foods be the new exchange location. Respondent said that during the phone call appellant Sandra Anderson said that she would be at Southdale

Center because she had not received any information about a change in the location. Thus, respondent went to Southdale Center to pick up her children.

Respondent said that when she and her husband arrived, appellant Sandra Anderson was outside of appellants' vehicle and appellant Norman Anderson and the children were inside the vehicle with the car doors locked. Respondent said appellant Sandra Anderson was "yelling . . . about lies and deceit because she didn't believe . . . that [Jerry's Foods] was the new correct drop-off place, and [said] no more lies, no more games." Respondent said, "Unlock the door, let my children out," and appellants would not unlock the door. Respondent repeated herself, and appellant Sandra Anderson "got close to [her,] continued yelling," and said there would be "repercussions" for respondent's behavior. Respondent's husband videotaped the interaction and the recording is part of the record.

Concerning the exchange of the children on December 22, respondent testified that while she retrieved her children from appellants' car and put them into her car, appellant Sandra Anderson took pictures of respondent and videotaped her. After respondent retrieved one child from appellants' car, appellant Sandra Anderson obstructed her from getting her other child by standing between the child, the car door, and respondent. Respondent asked appellant Sandra Anderson to move, but she did not; respondent waited about a minute and asked her again to move. When appellant Sandra Anderson did not move, respondent "reached around and unbuckled [the child] out of the car." As respondent walked with her children to her vehicle, appellant Sandra Anderson followed and continued to videotape respondent and the children. During the exchange, appellant

Sandra Anderson said nothing to respondent, and appellant Norman Anderson remained in appellants' car.

Appellants assert that the evidence does not establish that appellant Sandra Anderson engaged in conduct with the requisite intent to harass respondent. Appellants point to appellant Sandra Anderson's testimony explaining that when she used the word "repercussions" on April 10, her meaning "was that we intended to follow the court order and not change it because somebody else requested that [the location] be changed, and I stated there would be repercussions if we changed it, meaning lawyers would be involved."

But the harassment statute requires proof of subjective harassing intent *or* "objectively unreasonable" conduct on the part of the harasser. *Peterson*, 755 N.W.2d at 764. Respondent testified that on April 10, appellant Sandra Anderson told respondent that there would be "repercussions" for respondent's actions and yelled at her about lies and deceit while appellant Norman Anderson remained in their vehicle with respondent's children and with the doors locked. When respondent requested the doors be unlocked, neither appellant did so. The district court found that appellant Sandra Anderson attempted to keep respondent from getting her children and threatened repercussions for her conduct. We conclude that this conduct was objectively unreasonable.

Appellants also argue that locking the car doors on April 10 was not objectively unreasonable because their son's parenting time had not expired. But the record establishes that appellants planned in advance to keep the doors locked when respondent arrived to pick up her children; that respondent requested more than once that they unlock

the doors and neither did so; and that appellant Sandra Anderson yelled at respondent about lies and deceit and said there would be "repercussions" for her actions. Again, appellants' conduct was objectively unreasonable.

Concerning the exchange on December 22, appellants argue that the record is void of evidence of any intent by appellant Sandra Anderson to harass respondent because appellant Sandra Anderson testified that she believed the children were inappropriately dressed for the weather and that she wanted to report the matter to child protective services. Citing to *Peterson*, appellants argue that appellant Sandra Anderson had a good faith basis for recording the children. But appellants' reliance on *Peterson* is misplaced.

In *Peterson*, this court held that a petitioner claiming that a report to the police is an instance of harassment must demonstrate improper intent "so as to overcome the presumptively valid reason for the report." *Id.* at 766. The court explained that a "telephone call to the police was objectively reasonable in light of the alternative of confronting [the petitioner] personally, which would have been more likely to result in a dispute." *Id.* at 765. Here, appellant Sandra Anderson did not call the police or child protection as an alternative to confronting respondent; she photographed and videotaped respondent. Moreover, she did not respond when respondent asked her to move multiple times, and she obstructed respondent's access to one of her children. We conclude that this was not objectively reasonable conduct.

Appellants also argue that the evidence is insufficient to sustain the HRO against appellant Norman Anderson. We disagree. Appellant Norman Anderson testified that on April 10 he and his wife planned to lock the car doors when respondent arrived at the

exchange location so that appellant Sandra Anderson could talk to respondent. Appellant Norman Anderson remained in appellants' car with respondent's children with the doors locked, and when respondent repeatedly requested that the car doors be unlocked, he did not do so. Accordingly, the record supports that on April 10 appellant Norman Anderson attempted to keep respondent from getting her children. And we have already concluded that the record supports the district court's finding that appellants each individually asked respondent for her confidential address. Thus, the record is sufficient to support that appellant Norman Anderson engaged in repeated incidents of harassing conduct towards respondent.

Appellants allege that the evidence does not support a conclusion that appellants' conduct had a substantial adverse effect on respondent's safety, security, or privacy or that respondent had an objectively reasonable belief of such an adverse effect. Appellants point to a lack of testimony by respondent that she was "upset, or was distraught, or had any fear" or "that she was frightened or in some manner adversely affected" by their conduct. But in respondent's affidavit and petition for an HRO, respondent wrote, "I am scared. They want to tell my ex who I am deathly afraid of where I live and how to find me. They are threatening me and I live each day not only watching over my back for him but now them as well." This testimony supports a conclusion that appellants' conduct had a substantial adverse effect on respondent's safety, security, or privacy or that respondent had an objectively reasonable belief of such an adverse effect.

Because the district court's findings are supported by the record and because its findings support its conclusion of law that appellants engaged in repeated incidents of harassment of respondent, the district court did not abuse its discretion in issuing the HRO.

Affirmed.