This opinion is nonprecedential except as provided by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
A20-1334

Mitchell Wilfred Suess,
Respondent,

vs.

Wesley W. Scott,
Appellant

Filed May 10, 2021
Affirmed
Reyes, Judge

Sherburne County District Court
File No. 71-CV-20-725

Mitchell Wilfred Suess, Clear Lake, Minnesota (pro se respondent)

Wesley M. Scott,[1] Clear Lake, Minnesota (pro se appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this appeal from the district court's grant of respondent's petition for a harassment restraining order (HRO), appellant argues that the district court abused its discretion by

[1] We note that appellant's name also appears in multiple documents associated with this case as Wesley M. Scott and Wesley J. Scott. Because we are bound by the district court's title of the action, we use Wesley W. Scott here. Minn. R. Civ. App. P. 143.01.

(1) determining that his conduct constituted harassment; (2) imposing a 500-foot distance restriction and a two-year duration in the HRO; and (3) denying his motion for a new trial and request for a continuance. We affirm.

FACTS

The following facts are based on the district court's findings of fact and implicit credibility determinations. On July 4, 2020, respondent Mitchell Wilfred Suess drove his pontoon boat on Long Lake in Sherburne County, Minnesota, flying a political flag. Appellant Wesley W. Scott approached him on a jet ski three separate times. During the first incident, Scott "flip[ped] [Suess] off" and yelled "f--k you." During the second incident, he called Suess names, yelled profanities, circled Suess's boat, and sprayed Suess with water. He also made rude and threatening gestures, including appearing to reach toward the pontoon as if to board, and yelled that he would "beat the f--k out of" Suess. Suess spit on Scott out of fear and in an effort to get Scott to leave. And during the third incident, as Scott approached again, Suess yelled that he was on the phone with the sheriff. Scott asked if Suess was a Christian and said it was impossible for Suess to be a Christian and fly the flag. He again yelled profanities and called Suess a racist.

Suess filed a petition for an HRO, describing these events. The district court granted an ex parte HRO, which prohibited contact between the parties until December 2021.

Scott requested a hearing, which both parties attended on July 24, 2020 (HRO hearing). In addition to testimony that reflected the facts recounted above, the district court considered a letter from Suess's therapist showing his treatment for anxiety and post-traumatic-stress disorder and photos of the parties' interaction taken from Suess's cell-

phone video of one of the incidents. Scott objected to the therapist's letter for lack of foundation and relevance.

After Suess testified, Scott cross-examined Suess. However, the district court stopped him after six questions because it deemed the questioning harassing. Scott then testified as to his version of events.

The district court found that Scott's behavior on July 4 constituted several incidents of harassment and therefore issued an HRO, which included a 500-foot distance restriction and prohibited contact between the parties for two years. Scott filed a motion for a new trial asking the district court to vacate the HRO, grant a new trial, recuse herself, and require Suess to provide all exhibits before the new trial.

The district court declined to recuse. At a hearing on September 17, 2020 (motion hearing), it denied Scott's motion for a new trial, but reopened the matter for the limited purpose of allowing Scott to cross-examine Suess. Scott asked for a continuance so that he could obtain an attorney. The district court denied this request and ordered him to proceed with cross-examination immediately, which he did. The district court ultimately affirmed the HRO as is, finding Suess's testimony at the motion hearing credible and "virtually identical" to his testimony at the HRO hearing. This appeal follows.

DECISION

I. The district court did not abuse its discretion by determining that Scott's conduct constitutes harassment.

Scott argues that only one of his interactions with Suess constitutes harassing conduct and that his conduct therefore cannot meet the requirement of repeated incidents. We disagree.

We review the district court's ultimate decision to grant an HRO for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). In doing so, we review the district court's factual findings for clear error and give due regard to its opportunity to judge witness credibility. *Id.* But whether the facts found by the district court satisfy the definition of harassment is a question of law that we review de novo. *Id.* (explaining that authority to grant an HRO is statutory and that we review statutory interpretation questions de novo).

Harassment is defined, in relevant part, 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." Minn. Stat. § 609.748, subd. 1(a)(1) (2020); *Peterson*, 755 N.W.2d at 766 (stating that one incident is not enough to constitute harassment absent infliction of bodily harm or attempt to inflict bodily harm). The district court may grant an HRO if, after a hearing, it finds "reasonable grounds to believe that" harassment occurred. *Kush v. Mathison*, 683 N.W.2d 841, 844 (Minn. App. 2004). "The statute requires proof of, first, 'objectively unreasonable conduct *or* intent on the part of the harasser.'" *Peterson*, 755 N.W.2d at 764 (emphasis added)

(quoting *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006)). Objectively unreasonable conduct "goes beyond an acceptable expression of outrage and civilized conduct." *Kush*, 683 N.W.2d at 846. Second, the statute requires proof of "an objectively reasonable belief" by the harassed person that the harasser engaged in harassment. *Peterson*, 755 N.W.2d at 764 (quoting *Dunham*, 708 N.W.2d at 567) (other citation omitted).

Here, the district court determined that Scott's behavior constituted harassment. The district court found that Scott approached Suess three times. It found that Scott circled the pontoon, sprayed Suess, yelled profanities, called Suess names, and threatened to beat Suess. Due in part to its use of a form order, the district court did not make explicit findings regarding what Scott did during each incident. But on appeal, we may consider the district court's implicit findings of fact as well as its explicit findings. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (considering, on appeal from the district court's grant of an order for protection, implicit credibility findings). Here, in light of the district court's other findings and its ultimate determination, we conclude that it implicitly credited Suess's testimony that described Scott's behavior during the three separate incidents as follows: first, Scott "flip[ped] [Suess] off" and yelled "f--k you" from around 30 to 40 feet away; second, Scott approached within 10 and 15 feet of the pontoon, yelled profanities, called Suess offensive names, threatened "to beat the f--k out of" Suess, reached for Suess's pontoon as if to board, and sprayed Suess with water; third, Suess called the sheriff, and Scott again approached to within 30 to 40 feet of the pontoon, and, among other things, called Suess a racist.

Turning to whether each incident constitutes harassing conduct, we first note that Scott's behavior during each incident went beyond acceptable expressions of outrage and was objectively unreasonable. In addition, the district court found that Scott intended to harass Suess. Scott admitted that, by approaching Suess, he intended to engage with and elicit a response from Suess. The district court noted Scott's proximity to the pontoon and repeated approaches in making this finding. We conclude that the record supports the district court's finding that Scott intended to harass Suess.

On the second factor, the district court found that Scott's actions impacted Suess. It noted that Scott came close enough to the pontoon to be spit on and found that this proximity encroached on Suess's security. The district court also credited Suess's testimony that he spit on Scott out of fear. Although the district court made no findings regarding whether the first or third incidents impacted Suess, we note that Scott approached Suess multiple times, showing repeated threatening behavior. Further, Suess testified that he visited his therapist more frequently and had increased nightmares and anxiety as a result of Scott's behavior. The record therefore supports the district court's explicit and implicit determinations that each incident impacted Suess and that Suess's belief in that impact was objectively reasonable. In sum, because the record supports the district court's decision, we conclude that it did not abuse its discretion by issuing the HRO.

II. The HRO terms are not an abuse of the district court's discretion.

Scott argues that the district court abused its discretion by imposing a 500-foot distance restriction because it will limit his use of the lake, lead to accidental violations of the HRO, and be subject to arbitrary enforcement. Scott's arguments are misguided.

First, the statute does not limit the district court's discretion regarding the scope of a distance restriction. *See* Minn. Stat. § 609.748 (2020). Second, the 500-foot restriction prohibits Scott from coming within 500 feet of Suess's *house*, not his *person*, and therefore the risk of "accidental encroachment" is low. Third, the restriction delineates where Scott can and cannot be in relation to Suess's home and is therefore not subject to arbitrary enforcement. Accordingly, Scott has not shown that the district court abused its discretion by imposing a 500-foot distance restriction.

Scott argues next that the district court abused its discretion by impermissibly prompting Suess to seek and ultimately imposing a two-year HRO. We are not persuaded for two reasons. First, an HRO "must be for a fixed period of not more than two years." Minn. Stat. § 609.748, subd. 5(b)(3). The statute therefore allows the district court to impose an HRO for up to two years. Second, Scott ignores the context of the district court's comment. At the HRO hearing, Suess requested a permanent HRO, and the district court responded that it could not impose a permanent HRO on this record. It interpreted Suess's request as one for a two-year HRO, which Suess confirmed. In light of this context, we conclude that the district court did not abuse its discretion by imposing a two-year HRO.

Finally, Scott complains that the district court did not express its reasons for imposing the 500-foot and two-year parameters. But he cites to no legal authority for this argument and has therefore forfeited it. *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017) (stating that "assignment of error based on mere assertion, unsupported by argument or authority, is forfeited"), *review denied* (Minn. Apr. 26, 2017).

III. The district court did not abuse its discretion by denying Scott's motion for a new trial and his request for a continuance.

Scott argues that the district court should have granted a new trial because it limited his cross-examination of Suess, accepted hearsay evidence, and denied him the opportunity to submit rebuttal evidence at the HRO hearing. He also argues that the district court should have granted a continuance to allow him time to find an attorney before proceeding with cross-examination at the motion hearing. We are not persuaded.

A. Motion for new trial

We review a district court's decision whether to grant a new trial for an abuse of discretion. *E.g.*, *County. of Hennepin v. Laechelt*, 949 N.W.2d 288, 291 (Minn. 2020). HRO proceedings, however, are special proceedings. *Fiduciary Found., LLC ex rel. Rothfusz*, 834 N.W.2d 756, 761 (Minn. App. 2013), *review denied* (Minn. Sept. 17, 2013). In special proceedings, a motion for a new trial is not authorized unless either (a) the statute authorizing that special proceeding states otherwise or (b) the special proceeding actually involves a trial. *Schlitz v. City of Duluth*, 449 N.W.2d 439, 441 (Minn. 1990); *see Parson v. Argue*, 344 N.W.2d 431, 431 (Minn. App. 1984) (noting that if there was no trial, a motion for a new trial is an "anomaly"). The HRO statute, Minn. Stat. § 609.748, does not authorize a trial or a new trial. And a district court cannot abuse its discretion by denying relief that is not authorized. Accordingly, we affirm the district court's denial of Scott's request for a new trial.

Even if we consider Scott's arguments on the merits, they fail. First, the district court allowed Scott to fully cross-examine Suess at the motion hearing. Scott does not

challenge the adequacy of the second round of cross-examination. The district court therefore did not abuse its discretion by denying Scott's motion for a new trial and instead reopening the record to allow additional cross-examination. *See* Minn. R. Civ. P. 59.01, subd. 1 (allowing district court to "take additional testimony" on motions for new trial in non-jury cases); *Durand v. Durand*, 367 N.W.2d 621, 625 (Minn. App. 1985) (stating that district court may "receive additional evidence rather than grant a new trial if such a procedure will correct an error").

Second, Scott argues that he is entitled to a new trial because the district court allowed Suess's therapist's letter, which he contends is hearsay evidence. But he fails to cite any legal authority for this argument and has therefore forfeited it. *Scheffler*, 890 N.W.2d at 451.

Third, Scott argues that he is entitled to a new trial because the district court denied him an opportunity to present rebuttal evidence. His argument is not supported by the record, which shows that he had the opportunity to offer rebuttal evidence at both hearings. Further, "[e]ntitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error." *Kedrowski v. Lycoming Engines*, 933 N.W.2d 45, 62 (Minn. 2019) (quotation omitted); *see also* Minn. R. Civ. P. 61 (requiring error to be ignored unless "inconsistent with substantial justice"). Even assuming that the district court denied Scott the opportunity to subpoena Suess's therapist or others on the pontoon, Scott does not discuss what those witnesses' testimony would have shown and therefore has not shown prejudice. Scott's claim that he was denied the opportunity to offer rebuttal evidence therefore fails on the merits.

B. Continuance

Scott argues that the district court should have granted him, as a self-represented litigant, a continuance to find representation rather than proceeding immediately with cross-examination at the motion hearing. We will not reverse the district court's decision whether to grant a continuance absent a clear abuse of discretion. *Dunshee v. Douglas*, 255 N.W.2d 42, 45 (Minn. 1977). Scott cites *Kasson State Bank v. Haugen* for the proposition that the district court should allow a reasonable accommodation for a self-represented litigant. 410 N.W.2d 392, 395 (Minn. App. 1987). In *Kasson*, we reversed the district court's denial of a continuance when the self-represented defendant had insufficient time to find an attorney because he was out of town for three weeks when the plaintiff served its motion on him. *Id.* Scott has no similar excuse for failing to find an attorney. Rather, Scott, a licensed attorney, could have obtained counsel before either the HRO hearing or the motion hearing but nevertheless proceeded as a self-represented party. The district court did not abuse its discretion by denying Scott's request for a continuance.

Affirmed.