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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2315**

Terry Dean Johnson, et al.,
Appellants,

vs.

Michels Property Groups, LLC, et al.,
Respondents.

**Filed September 14, 2010
Affirmed
Bjorkman, Judge**

Kandiyohi County District Court
File No. 34-CV-09-794

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellants)

Jacqueline A. Dorsey, Mary L. Hahn, Hvistendahl, Moersch, Dorsey & Hahn, P.A.,
Northfield, Minnesota (for respondents)

Considered and decided by Kalitowski, Presiding Judge; Bjorkman, Judge; and
Muehlberg, Judge.*

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

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants Terry Dean Johnson and Marjorie Johnson challenge the district court's denial of their petition for a harassment restraining order (HRO) against respondents Kelly Michels and the Michels Property Groups, LLC. Because the district court did not abuse its discretion in denying the HRO, we affirm.

FACTS

The Johnsons own lakefront property in Spicer. The property to the north of the Johnsons is owned by the Michels Property Groups and the property to the south is owned by Kelly Michels. In the fall of 2009, Terry Johnson noticed video cameras on both adjacent properties that pointed toward his house. Johnson saw 15 cameras that appeared to be connected to a DVD recorder, which created a continuous archive of the footage. It is undisputed that the Michels installed the cameras for security purposes following numerous acts of vandalism.

On September 21, 2009, the Johnsons called the Kandiyohi County Sheriff's Office to report the cameras. But before a deputy arrived, Terry Johnson went onto the Michels properties and cut the camera wires.¹ Deputy Rob Twedt responded to the call. He went to the Johnson home, walked around a portion of the Michels properties, and took photographs of the cameras.

¹ Johnson was charged with trespass and third-degree criminal damage to property. The criminal charges are not part of this appeal.

The Johnsons petitioned the district court for an HRO under Minn. Stat. § 609.748 (2008). The district court held an evidentiary hearing during which the Johnsons, Deputy Twedt, and Kelly Michels testified. The Johnsons testified that several of the cameras point toward private areas of their home, including their bedroom and bathroom windows and an exterior hot tub, and that the cameras were intrusive and made them feel violated. Michels was called for cross-examination during the Johnsons' case. He admitted installing the cameras, but testified that they are primarily directed at the Michels properties. He also testified that only four of the cameras were functional at the time of the evidentiary hearing. Deputy Twedt testified that he observed eight cameras on the Michels properties.

At the close of the Johnsons' case, the district court granted the Michels' motion to dismiss the petition. The next day, the district court issued written findings of fact, conclusions of law, and an order dismissing the petition. The district court found that "the cameras can only capture images that would also be visible to any observant neighbor." The district court rejected the Johnsons' argument that the continuous aiming of the cameras at their home was intrusive and substantially affected their privacy, concluding that

[t]here is no showing of a physical assault and no showing of repeated incidents of intrusive or unwanted acts, words or gestures that have a substantial adverse effect on the safety, security, or privacy of another. Respondents have not trespassed on the property of [the Johnsons] nor made repeated unwanted contacts with [the Johnsons]. Respondents have not undertaken any active measures toward the [Johnsons] other than the installation of cameras on

[r]espondents' property and the passive operation of those cameras.

This appeal follows.

DECISION

A district court's determination regarding whether to issue an HRO is reviewed for abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008); *see also Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004) (noting that a district court exercises its discretion in issuing an HRO), *review denied* (Minn. Sept. 24, 2004). We will only set aside a district court's findings of fact with respect to the issuance of an HRO if they are clearly erroneous. *Kush*, 683 N.W.2d at 843. But statutory interpretation is a question of law, which we review *de novo*. *Peterson*, 755 N.W.2d at 761.

A district court may grant an HRO when "the court finds at the hearing that there are reasonable grounds to believe that [an individual] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2008). "Harassment," as the term is used in the statute, is defined as

a single incident of physical or sexual assault or 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) (2008).

The Johnsons assert that this case presents only legal issues, arguing that the district court failed to apply the correct law. Because the challenge also implicates the

district court's factual findings, we address the court's legal analysis and findings of fact in turn.

I. The district court did not err in its legal analysis.

The Johnsons first contend that the district court erred in failing to apply other criminal statutes to their HRO request. Specifically, they argue that Minn. Stat. § 609.749 (2008), which imposes criminal liability on a person who “stalks, follows, monitors, or pursues another, whether in person or through technological or other means,” should be read to “cross-reference” the HRO statute. The Johnsons cite no authority for this assertion. We note that the legislature separately defined “harass” for purposes of each statute. In the criminal stalking statute, the legislature provided that “[a]s used in this section, ‘harass’ means to engage in intentional conduct which: (1) the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and (2) causes this reaction on the part of the victim.” Minn. Stat. § 609.749, subd. 1. The legislature crafted a different definition in the HRO statute and did not incorporate or reference the definition contained in or the conduct proscribed by section 609.749. The Johnsons do not argue that the HRO statute’s definition of “harass” is ambiguous. Accordingly, we decline to incorporate a different statutory definition into the HRO statute.

The Johnsons also point to Minn. Stat. § 609.746, subd. 1(d) (2008), which provides that

- [a] person is guilty of a gross misdemeanor who:
 - (1) surreptitiously installs or uses any device for observing, photographing, recording, amplifying, or

broadcasting sounds or events through the window . . . of a . . . place where a reasonable person would have an expectation of privacy . . . ; and

(2) does so with intent to intrude upon or interfere with the privacy of the occupant.

The Johnsons argue that *State v. Perez*, 779 N.W.2d 105 (Minn. App. 2010), *review denied* (Minn. June 15, 2010), where the defendant surreptitiously videotaped his wife in their shared, residential bathroom, is apposite and supports application of section 609.746's definitional terms to the HRO statute. We disagree. This case does not involve the secret recording of events that occur in an area where a person reasonably expects privacy. The cameras recorded events that an observant neighbor could view. And for the reasons discussed above, we decline to apply the terms of a different statute to provide a definition that is clearly expressed in the HRO statute.

Finally, the Johnsons argue that analogous tort law principles should be applied to determine whether the Michels committed acts of harassment for purposes of the HRO statute. Specifically, the Johnsons argue that the Michels' conduct satisfies the elements of the invasion of privacy tort the supreme court recognized in *Lake v. Wal-Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998), and that the district court erred in not applying these tort principles. We disagree. We decline to look beyond the terms of the HRO statute to construe terms defined therein. And we observe that the Johnsons affirmatively chose to seek an HRO rather than pursue a tort claim. The district court did not err in applying the law.

II. The district court's findings of fact are not clearly erroneous.

We next consider whether the district court's findings of fact are clearly erroneous. To sustain an HRO petition, the petitioner must prove (1) “objectively unreasonable conduct or intent on the part of the harasser” and (2) “an objectively reasonable belief on the part of the person subject to harassing conduct.” *Peterson*, 755 N.W.2d at 764 (quoting *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006)). Because the Michels' intent is not at issue, the critical fact questions are whether the placement and operation of the cameras are intrusive acts that had a “substantial adverse effect” on the Johnsons.

The district court found that the cameras were placed in inconspicuous places and the visual portions of the cameras were relatively small. After noting the Johnsons' subjective feelings about the intrusiveness of the cameras, the court found that “the cameras can only capture images that would also be visible to any observant neighbor.” These findings are supported by the evidence. The cameras covered areas of the Johnson property that are visible from the Michels properties and the lake. The Johnsons acknowledge that the Michels have a right to take photographs from their property—including photographs of the Johnson home. There is no allegation or evidence that the cameras utilized thermal or other imaging techniques that provide greater access than a still camera or the human eye. The Johnson home has no windows on the north side and only one window on the south side. Our thorough review of the record demonstrates that the district court did not clearly err in finding that the placement and operation of the

cameras are not intrusive acts and do not have a substantial adverse effect on the Johnsons.

On this record, we conclude that the district court did not abuse its discretion in denying the request for an HRO.

Affirmed.