STATE OF MINNESOTA
IN COURT OF APPEALS
A09-0008, A09-0009

James Logan Schacht, petitioner,
Appellant,

vs.

Matt Lucas,
Respondent (A09-8),

Sara Reynolds,
Respondent (A09-9).

Filed August 18, 2009
Affirmed
Minge, Judge

Hennepin County District Court
File No. 27-CV-08-27267

James Logan Schacht, 691 American Boulevard East, #8, Bloomington, MN 55420 (pro se appellant)

Ryan A. Olson, Felhaber, Larson, Fenlon & Vogt, P.A., 220 South Sixth Street, Suite 220, Minneapolis, MN 55402 (for respondents)

Considered and decided by Worke, Presiding Judge; Minge, Judge; and Collins, 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.

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

MINGE, Judge

Appellant challenges the dismissal of two separate but related harassment restraining order (HRO) petitions. Because we conclude that the district court did not abuse its discretion in refusing to issue the HROs, we affirm.

FACTS

In 2006 and 2007, appellant James Logan Schacht worked at the Southdale YMCA in Edina. Respondents Matt Lucas and Sara Reynolds were coworkers. In October 2008, appellant filed a HRO petition seeking relief against respondent Lucas and another seeking relief against respondent Reynolds. Each petition alleged the following incidents. Between October 2006 and April 2007, respondents approached appellant while he was working at the YMCA fitness desk, and Reynolds placed her workout clothes on the desk. Lucas picked up a pair of her shorts, held them toward appellant's face, and set them down. Reynolds backed up to within a foot or two of appellant, bent over slightly, and twice turned the sides of her shorts down slowly. Lucas said, "You don't like?" with a threatening tone and posture. Appellant is reasonably certain that Lucas said "in an angry, hostile, and threatening tone at low volume, just above the subliminal threshold, 'I'm just going to break your nose Jim.'"

The petitions further alleged that the following occurred in September 2007. First, while appellant walked to the locker room, Reynolds stood by appellant's personal trainer picture with an angry look on her face and a threatening posture. Appellant then saw Lucas walk by with an angry look and threatening posture. In addition, appellant alleged

that, sometime in 2007, Lucas said "again in an angry, hostile, and threatening tone at low volume, just above the subliminal threshold, 'Aw, Jim, I'm just going to break your nose.'" Several other incidents were alleged that involved appellant feeling concerned about his safety when being near respondents, but appellant does not allege that, in those incidents, respondents overtly said or did anything.

In December 2008, a court referee held a hearing on the petitions and ultimately the district court dismissed them both. This appeal follows.

D E C I S I O N

The issue is whether the district court abused its discretion in dismissing appellant's HRO petitions. We review the dismissal of an HRO petition for an abuse of discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). A district court's findings of fact are reviewed for clear error, "and due regard is given to the district court's opportunity to judge the credibility of witnesses." *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

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 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 . . . ." *Id*., subd. 1(a)(1) (2008). Evidence is not sufficient to support issuance of an HRO if the district court cannot find that the perpetrator's "actions had, or were intended to have, a substantial

adverse effect on the safety, security, or privacy of [the petitioner]." *Kush*, 683 N.W.2d at 844. "The determination of whether certain conduct constitutes harassment may be judged from both an objective standard, when assessing the effect the conduct has on the typical victim, and a subjective standard, to the extent the court may determine the harasser's intent." *Id*. at 845. Inappropriate or argumentative statements alone cannot be considered harassment. *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002).

In *Peterson*, we reversed the issuance of an HRO where it was alleged that the perpetrator harassed the victim by (1) observing the interior of his pickup truck when it was parked on a public street; (2) calling the police to report that the victim did not have a child-safety seat in his pickup truck when transporting a child; and (3) confronting him in a verbally aggressive and threatening manner during a chance encounter. 755 N.W.2d at 763-66. We held that the verbal confrontation was one incident of an intrusive or unwanted act that had or was intended to have a substantial adverse effect on the victim, but there was insufficient evidence that the other two incidents had, or were intended to have, the requisite substantial effect on the victim. *Id.* at 766. We held that it was error to issue the HRO because "[o]ne incident of an intrusive or unwanted act is insufficient to prove harassment if there is no infliction of bodily harm or attempt to inflict bodily harm." *Id.*

A. Respondent Reynolds

In regard to respondent Reynolds, over the course of the alleged incidents, she allegedly made angry facial expressions and assumed threatening poses and, on one occasion, turned down the sides of her shorts in his view. Because appellant provided

little context for the incident, applying an objective standard, we cannot conclude that the district court clearly erred in failing to determine that Reynolds's conduct would presumptively have a substantial adverse effect on the safety, security, or privacy of a typical victim in his situation. Appellant was in public when the incident with the shorts occurred, and there is no suggestion that he fled the scene due to the conduct or complained immediately to a supervisor or police. The record states only that he left the front desk to help a customer. This limited record does not provide a sufficient basis for us to conclude that the district court abused its discretion in finding that a typical victim would not have been substantially affected by at least two of these incidents. Similarly, viewed subjectively, it is not clear that the district court abused its discretion in declining to find that the conduct was harassment.

B. Respondent Lucas

In regard to respondent Lucas, the allegations are that he allegedly gave appellant several angry looks, briefly held Reynolds's shorts up to appellant's face, and twice whispered threats to break appellant's nose. Similar to Reynolds's case, when applying the subjective standard, it is unclear what Lucas intended by this conduct. Of course, a threat to break someone's nose generally indicates assaultive intent, but the threats alleged were apparently expressed in whispers (at a "low volume, just above the subliminal threshold") in a public gym. Appellant was only "reasonably certain" of what Lucas said, and there is no allegation that Lucas's posture or conduct simultaneously or subsequently implied a confrontation with appellant. Thus, when viewing Lucas's

conduct under the subjective standard, we conclude that the district court did not abuse its discretion in failing to find harassment.

In applying the objective standard, the district court found that "the claims . . . do not demonstrate substantial adverse effect on [appellant's] safety, security, or privacy." Multiple threats of assault certainly could support a finding of harassment if the circumstances persuaded a fact-finder that a typical victim's safety, security, or privacy was affected in a substantially adverse way. However, in this case, the allegations were peculiar; they were whispered, and appellant was only "reasonably certain" that they were made. We also note that the petition was filed long after the incidents occurred, suggesting that appellant had no immediate fear for his safety or security. Even after appellant described the incidents in court, the district court was not persuaded that the record supported a finding of harassment. We conclude that, on this record, the district court's findings were not clearly erroneous.

Because the district court did not abuse its discretion when determining that harassment did not occur and by dismissing the HRO petitions, we affirm.

Affirmed.

Dated: