STATE OF MINNESOTA
IN COURT OF APPEALS
A09-403

Ava Marie Martinez & o/b/o Minor Child,
petitioner,
Respondent,

vs.

Brittany Ann Layland,
Appellant.

Filed January 5, 2010
Affirmed
Crippen, Judge[*]

Ramsey County District Court
File No. 62-HR-CV-09-16

Ava Marie Martinez (pro se respondent)

Brittany Layland (pro se appellant)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Crippen, Judge.

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

CRIPPEN, Judge

In this appeal from the issuance of a harassment restraining order, appellant argues that the district court erred in disregarding the testimony of her witness for credibility

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

reasons. Appellant also challenges the sufficiency of evidence and the adequacy of district court findings to support the order. We affirm.

FACTS

Respondent Ava Martinez, on behalf of herself and her minor child, petitioned the district court for a harassment restraining order (HRO) under Minn. Stat. § 609.748 (2008). The petition stated that appellant Brittany Layland, familiar to respondent since 2006, had on numerous occasions harassed respondent and her son. Respondent alleged that the harassment included leaving threatening and sexually explicit messages on respondent's voicemail and personal website, waiting for respondent outside of stores and other establishments and yelling obscenities and sexual expletives at her, following respondent in her vehicle and photographing her, and impersonating respondent on the internet in an unwelcome manner. The district court issued a temporary restraining order (TRO) against appellant, pursuant to Minn. Stat. § 609.748, subd. 4, based on the allegations made in the petition.

At the HRO hearing, respondent ratified her petition through her testimony, supported by two witnesses. Respondent's sister and aunt lived with respondent for a short time and testified that appellant engaged in harassing acts on numerous occasions.

Respondent's sister witnessed appellant calling respondent offensive names and repeatedly telephoning respondent, as well as the threatening and impersonating messages written by appellant on two websites. Respondent's aunt received phone calls from appellant requesting to speak with respondent and threatening physical violence to respondent and her son. Respondent testified that the harassment had occurred between

November 2008 and January 7, 2009, the day before the TRO was filed. The statements on her personal website, respondent claimed, led to her losing work in the form of four modeling contracts. She also testified that, as a result of appellant's harassment, she and her son are in therapy and are afraid at night.

Appellant testified on her behalf, as did her fiancé, E.V. Appellant stated that respondent and all of her witnesses had lied. She denied taking part in any harassing behavior.

According to respondent, she had a romantic relationship with E.V. prior to his engagement to appellant, and that relationship was the impetus for appellant's behavior. On direct examination, E.V. testified that he and respondent were just acquaintances. On cross-examination, respondent introduced three documents that she claimed had been written and signed by E.V. E.V. first denied recognizing any of the three documents; he also denied any of the three signatures being his signature. After questioning by the judge, E.V. later conceded the writing on one document "has to be" his writing, since it was the document he had filed with the court. After examining known examples of E.V.'s signature, the judge observed that his signatures were exactly the same as those on the disputed documents; the court then stated that E.V. had lied in his testimony and that, as a result, he found it difficult to believe what he said about his previous relationship with respondent and would disregard E.V.'s testimony.

The district court also stated for the record that appellant's testimony was "significantly less persuasive than [respondent's] testimony." The court ruled that harassment had occurred and issued an HRO prohibiting appellant from harassing

respondent or her son, being within a one-block radius of respondent's residence or workplace, and entering respondent's son's school.

D E C I S I O N

1.

Appellant argues that the district court abused its discretion in disregarding the testimony of E.V. Credibility determinations are the exclusive province of the fact-finder and will not be disturbed on appellate review absent an abuse of discretion. *See Conroy v. Kleinman Realty*, 288 Minn. 61, 66, 179 N.W.2d 162, 165-66 (1970) (stating that determining witness credibility is exclusive province of fact-finder); *see also Sinsabaugh v. Heinerscheid*, 428 N.W.2d 476, 480 (Minn. App. 1988) (recognizing district court's discretion in assessing witnesses' credibility and weight to be assigned to their testimony). "The testimony of a witness may be disregarded if it contains inherent improbabilities or contradictions which, alone or in connection with other circumstances in evidence, furnish a reasonable ground for concluding that the testimony is not true." *Dreyling v. Comm'r of Revenue*, 753 N.W.2d 698, 702 (Minn. 2008) (quoting *Caballero v. Litchfield Wood-Working Co.*, 246 Minn. 124, 129, 74 N.W.2d 404, 408 (1956), *superseded by statute on other grounds*, Minn. Stat. § 336.3-303 (2008)).

The record in this case does not reflect an abuse of discretion. Inconsistent testimony was presented, specifically relating to the former relationship between respondent and E.V., and E.V.'s credibility was damaged by testimony that he did not sign documents containing his signature. The judge also alluded to the fact that these parties had appeared before him previously, and appellant, now E.V.'s fiancé, had

acknowledged at that time a previous relationship between E.V. and respondent. The court had sufficient evidence to make its credibility determination. Assessment of credibility was the prerogative of the court, and it did not abuse his discretion in exercising that right.

2.

The district court may issue an HRO if it finds, inter alia, "that there are reasonable grounds to believe that [a person] has engaged in harassment." Minn. Stat. § 609.748, subd. 5(a)(3) (2008). 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, regardless of the relationship between the actor and the intended target." *Id.*, subd. 1(a)(1) (2008). The court's findings of fact will not be set aside unless clearly erroneous, and due regard is given to the district court's opportunity to judge the credibility of witnesses. Minn. R. Civ. P. 52.01. "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999) (quotation omitted).

Evidence of appellant's "repeated incidents of intrusive or unwanted acts, words, or gestures" was presented at the hearing. And the record furnishes no reason to disturb the district court's credibility assessments, which were stated on the record. Sufficient facts exist on the record to reach the statutory requirements of Minn. Stat. § 609.748. When viewed in conjunction with the district court's credibility assessments, sufficient evidence was presented to support the issuance of the HRO.

3.

Appellant argues that there are no specific findings of harassment. The district court must make specific findings of harassment before it may issue an HRO. *See Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995) (stating that "[w]e believe that Minn. Stat. § 518B.01 [regarding orders for protection] and Minn. Stat. § 609.748 are sufficiently similar that we may recognize case law construing the former as applicable to the latter"); *Nohner v. Anderson*, 446 N.W.2d 202, 203 (Minn. App. 1989) (holding that specific findings of domestic abuse are required for an order for protection); *see also* Minn. R. Civ. P. 52.01 (requiring that the district court "find the facts specially" in all actions tried without a jury). Findings are necessary in order "to permit meaningful review upon appeal and it is therefore necessary that [the district court] find facts and state conclusions clearly and specifically." *Crowley Co. v. Metro. Airports Comm'n*, 394 N.W.2d 542, 545 (Minn. App. 1986) (quotation omitted).

"It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of evidence . . . ." Minn. R. Civ. P. 52.01. Whether a judge's oral statement that is recorded in open court constitutes a finding under Minn. R. Civ. P. 52.01 is a question of law. *Cf. Varda v. Nw. Airlines Corp.*, 692 N.W.2d 440, 444 (Minn. 2005) (stating that "the application of a statute to essentially undisputed facts is a question of law"). This court reviews questions of law de novo. *Rubey v. Vannett*, 714 N.W.2d 417, 421 (Minn. 2006).

In issuing the February 4, 2009 HRO, the district court utilized a form that anticipates findings by the checking of pertinent items. The court checked a box

indicating that there are "reasonable grounds to believe" respondent engaged in harassment of appellant or her children. Although the form suggests that this finding be explained by checking added items, the court did not check any of these added recitals. Appellant argues that this failure to check an additional item is evidence of a lack of sufficient findings to support the HRO. But the court expressly stated findings on the record, addressing E.V's lack of credibility, stating that it was not compelled to believe every allegation stated in the petition, but observing that it believed enough assertions to "find that harassment has occurred."

The district court's oral findings adequately satisfy the requirement that the district court make specific findings of harassment in order to issue an HRO. The actions alleged by respondent were of the kind listed on the form, including "ma[king] uninvited visits to [respondent]" and "ma[king] harassing phone calls to [respondent]." The court duly found that some of the harassment alleged by respondent had occurred, and the district court also found that harassment barred by Minn. Stat. § 609.748 had occurred.

Because these statements refer to evidence on the record, with account for witness credibility determinations, it constitutes a finding under Minn. R. Civ. P. 52.01, it supports specific grounds the court neglected to check on the form order it used, and it supports at least one of the potential grounds for issuance of a harassment order. It is sufficient to support the issuance of the HRO.

Affirmed.