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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1171**

Joni Franz,
Appellant,

vs.

Elizabeth Franz Lyons,
Respondent.

**Filed February 23, 2010
Affirmed
Wright, Judge**

Crow Wing County District Court
File No. 18-CV-08-7477

Thomas F. Murtha IV, Murtha Law Office, Duluth, Minnesota (for appellant)

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

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's dismissal of her application for a harassment restraining order (HRO), arguing that the evidence was sufficient to support the issuance of an HRO. Appellant also argues that the district court abused its discretion by denying her motion for amended findings and judgment. We affirm.

FACTS

In December 2008, appellant Joni Franz petitioned the district court for an HRO against respondent Elizabeth Franz Lyons, the sister of Franz's deceased husband. Franz asserted that Lyons had engaged in several instances of harassing conduct that made her fear for her safety and for that of her children. As a result, Franz allegedly was unable to continue farming.

After a hearing on Franz's petition, the district court concluded that the allegations of harassment were not proved and dismissed Franz's petition. Franz moved for amended findings and judgment, arguing that the evidence presented to the district court was sufficient to issue an HRO. The district court denied Franz's motion following a hearing. This appeal followed.

DECISION

Franz asserts that the district court abused its discretion by dismissing her petition for an HRO. The decision to issue an HRO rests within the district court's discretion. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). We review the dismissal of an HRO petition for an abuse of discretion. *Id.* In doing so, we review the district court's findings of fact for clear error, giving due regard to the district court's opportunity to judge witness credibility. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004) (citing Minn. R. Civ. P. 52.01), *review denied* (Minn. Sept. 29, 2004). When the district court's findings of fact are supported by the evidence, we will not disturb them on appeal. *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

A district court may grant an HRO when it “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). If the evidence does not support a finding that the perpetrator’s “actions had, or were intended to have, a substantial adverse effect on the safety, security, or privacy of [the petitioner],” the evidence is not sufficient to warrant the issuance of an HRO. *Kush*, 683 N.W.2d at 844. The HRO statute requires (1) “objectively unreasonable conduct or intent on the part of the harasser” and (2) an objectively reasonable belief by the object of the harassing conduct that he or she was being “subject[ed] to harassing conduct.” *Peterson*, 755 N.W.2d at 764, 766 (quotations omitted). Conduct may be judged from a subjective standard “to the extent the court may determine the harasser’s intent.” *Kush*, 683 N.W.2d at 845; *see also Peterson*, 755 N.W.2d at 764 (citing *Kush*, 683 N.W.2d at 845 for consideration of subjective intent). But inappropriate or argumentative statements alone cannot be considered harassment. *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002).

In support of her petition, Franz detailed several instances of what she characterized as Lyons’s harassing conduct. The first allegation involves hang-up telephone calls that Franz maintains she began receiving in September 2008. Franz did not identify dates on which these hang-up calls occurred. But she contended that they

were made when Lyons was in town. She also did not present telephone records or any other evidence to support her claim that Lyons made the hang-up calls. By the time she filed the HRO petition, the hang-up calls had ceased. Lyons testified that she had not called Franz's home since her brother passed away in April 2008. Based on our thorough review of the record, there is no evidence beyond Franz's general allegation that Lyons made any hang-up calls. Accordingly, the district court's finding that Franz failed to prove this allegation of harassment is not an abuse of discretion.

The second allegation involves an incident that occurred on September 13, 2008, when, according to Franz, she was putting up a cattle gate across the road to her home and Lyons "came running over . . . cussing at [her]," called her a vulgar name, pushed the gate down, and threatened her. Franz called the police. According to Lyons, when she observed Franz placing the cattle gate across the driveway, she approached Franz and said either, "'What the hell' or 'What the [expletive] do you think you people are doing.'" Lyons admitted removing a wire from the gate, which caused the gate to fall, but denied pushing the gate down or otherwise threatening Franz. Lyons's son, who witnessed the altercation, testified that Lyons "said a couple of swear words," but she did not push down the gate, make threatening gestures, or physically touch Franz.

Franz's petition could prevail only if she proved "objectively unreasonable conduct or intent on the part of the harasser." *Peterson*, 755 N.W.2d at 764 (quotation omitted). Although Lyons's use of profanity may have offended Franz, such comments are not independently sufficient to demonstrate objectively unreasonable conduct. *See Beach*, 649 N.W.2d at 503 (stating that profanity alone is not harassment). Rather, the

record includes evidence that Lyons did not push down the gate or otherwise threaten Franz, she remained in control throughout the encounter, and she stayed between six and ten feet away from Franz during the altercation. This evidence supports a finding that Lyons did not engage in objectively unreasonable conduct. Additionally, there is no evidence in the record to establish that Lyons's actions were subjectively intended to have a substantial adverse effect on the safety, security, or privacy of Franz. *Kush*, 683 N.W.2d at 844. "Intent is a credibility question on which we defer to the trial court." *Vangsness v. Vangsness*, 607 N.W.2d 468, 473 (Minn. App. 2000). We, therefore, defer to the district court's determination that Lyons's testimony that she did not engage in harassing conduct was credible and conclude that the evidence supports that Lyons did not have the subjective intent to adversely affect Franz's safety, security, or privacy.

In addition, Franz's petition depended on her proving that she held an "objectively reasonable belief" that she was being "subject[ed] to harassing conduct." *Peterson*, 755 N.W.2d at 764, 766 (quotation omitted). But when she contacted police, Franz did not indicate that she was fearful of Lyons, which supports a finding that Lyons's actions did not have an actual adverse effect on Franz's safety, security, or privacy. And based on the evidence that Lyons did not push the fence down or otherwise threaten Franz, that Lyons was angry but in control, and that Lyons did not approach Franz in a threatening manner, there is record support that Franz did not hold an "objectively reasonable" belief that she was being subjected to harassment. Accordingly, the district court's finding that Franz did not prove this allegation is not clearly erroneous.

Franz's third allegation of harassment involves an incident that occurred in November 2008 when, according to Franz, Lyons drove by Franz's daughter who was running along the road, slowed down, and glared. Lyons admitted driving by a jogger, but she denied slowing down as she passed the jogger. Lyons testified that, although "it may have been interpreted as glaring," she harbored no intent to glare because she did not know who the person was. Lyons's sister, who was Lyons's passenger that day, testified that she did not recall seeing an individual jogging but that Lyons's "driving was fine." She also testified that she did not observe Lyons glaring or making facial expressions at anyone. There is nothing objectively unreasonable about driving past a jogger on a road without glaring, and Lyons expressly denied any intent to harass the jogger by glaring or otherwise. The record supports the finding that Franz failed to prove objectively unreasonable conduct or intent. Additionally, although Franz's daughter stated that she was "very shaken up" by the incident, such a reaction is not reasonably attributable to Lyons in light of the testimony by Lyons and her sister. The district court's finding that this allegation was not proved, therefore, was not an abuse of discretion.

Franz's fourth allegation is that Lyons repeatedly drove by Franz's home slowly, almost coming to a stop at Franz's driveway. Lyons denied this conduct, and Franz testified that the road near her driveway is the same road that Lyons used to reach the homes of her sister and mother, which were approximately one-half mile away and one mile away respectively. Lyons's admitted driving past Franz's driveway on the way to her mother's or sister's home, which, without more, is not objectively unreasonable. Although Franz asserts that Lyons reduced her speed when she drove past, Lyons denied

doing so; and we defer to the district court's credibility determinations. *Kush*, 683 N.W.2d at 843-44. Based on Lyons's testimony, the record supports that Franz failed to prove objectively unreasonable conduct or intent, or an objectively reasonable belief that she was being harassed by Lyons's driving past Franz's home.

Franz's fifth allegation of harassment involves the removal and destruction of signs that Franz had posted on what she maintains is her property. Ownership interests in the property on which the signs were posted are in dispute, apparently related to the status of a life estate interest held by Lyons's mother. Franz asserts that Lyons removed and destroyed the signs and that Lyons admitted doing so. Lyons testified that she removed the signs and placed them across the road at the request of her mother; she denied destroying the signs. Lyons also contradicted Franz's assertion that Lyons admitted destroying the signs when she testified that there was no discussion regarding the signs during the incident.

Removal of the signs may be objectively unreasonable if Franz owned the property on which the signs had been posted. Franz submitted a warranty deed and contract-for-deed agreement in support of her claim of ownership. The two documents conflict, however. The contract-for-deed agreement states that Lyons's mother retained a life estate interest in "the use of and access to the home and garage." But the warranty deed states that the life estate interest is in the homestead and garage. A "homestead" is defined as "[t]he house, outbuildings, and adjoining land owned and occupied by a person or family as a residence." *Black's Law Dictionary* 802 (9th ed. 2009). If Lyons's mother's interest is in the homestead, it may include the property on which Franz posted

the signs. Under such circumstances, Lyons's removal of the signs at her mother's request would not be objectively unreasonable, nor would it demonstrate an intent to harass Franz. Based on this contradictory evidence regarding the nature of the property interest, a finding that Franz had not proved that removal of the signs was objectively unreasonable or intentional was not an abuse of discretion. Moreover, Franz was required to prove that she held an objectively reasonable belief that she was subject to harassing conduct, *Peterson*, 755 N.W.2d at 764, 766, which constitutes actions having "a substantial adverse effect on the safety, security, or privacy of [the petitioner]." *Kush*, 683 N.W.2d at 844. But there is no evidence that Franz suffered such a substantial adverse effect from the removal of the signs. Consequently, the district court did not abuse its discretion by finding this allegation was not proved.

Finally, Franz challenges the district court's denial of her motion for amended findings, arguing that the motion should have been granted so that Franz "could know why her petition was denied." A district court may amend its findings and, if judgment has been entered, amend the judgment accordingly. Minn. R. Civ. P. 52.02. Whether to grant a motion for amended findings rests within the district court's discretion, and we will not reverse its decision absent an abuse of that discretion. *See Zander v. Zander*, 720 N.W.2d 360, 364 (Minn. App. 2006) (applying abuse-of-discretion standard), *review denied* (Minn. Nov. 14, 2006).

Franz contends that, because the district court used a form order and checked the box indicating that "[t]he allegations are not proven" without further elaboration, remand is warranted for failure to make the necessary findings. But the form used by the district

court provides a list of potentially harassing acts, and, according to the form, checking a box next to one of these items indicates that the district court found reasonable grounds to believe the respondent has engaged in harassment by committing the selected act. The district court's decision not to select any of these items constitutes a rejection of the designated ground as a proven basis for issuing an HRO. *See Peterson*, 755 N.W.2d at 766 (stating that this court may assume that the district court, by failing to make findings as to an argument, had rejected it as grounds for issuance of an HRO). Our careful review of the record establishes that the district court's rejection of these grounds for issuance of an HRO and its conclusion that Franz had not proved her allegations of harassment are well founded. Accordingly, the district court did not abuse its discretion by denying Franz's motion for amended findings.

Affirmed.