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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1799**

Jessica Ann Krebs,  
Respondent,

vs.

Fritz Faus,  
Appellant.

**Filed August 10, 2010  
Affirmed  
Hudson, Judge**

Hennepin County District Court  
File No. 27-CV-09-6424

Thomas A. Gilligan, Jr., Murnane Brandt, St. Paul, Minnesota (for respondent)

Michael Perlman, Perlman Law Office, Minnetonka, Minnesota (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Hudson, Judge; and  
Collins, Judge.\*

**UNPUBLISHED OPINION**

**HUDSON, Judge**

Appellant challenges the district court's grant of a harassment restraining order (HRO). Because the district court did not abuse its discretion by issuing the HRO, we affirm.

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

## **FACTS**

Appellant Fritz Faus and respondent Jessica Ann Krebs are the parents of two minor children. On March 8, 2007, the district court issued a stipulated two-year HRO, which prohibited appellant from contacting respondent in person or by any other means. That order was modified slightly by agreement and expired by its terms on March 8, 2009.

On March 30, 2009, respondent filed a petition seeking an HRO based on a number of incidents of alleged harassment. After a hearing, the district court issued an HRO, determining that appellant, on two or more occasions, engaged in behavior that constituted harassment under Minn. Stat. § 609.748, subd. 1(a)(1) (2008). Specifically, the district court found that: (1) on May 26, 2007, appellant had direct contact with respondent at the Park Tavern in St. Louis Park in violation of the prior HRO; and (2) on May 24, 2008, after dropping off the children at a supervised-visitation location, appellant lay in wait for respondent for 20 minutes behind a nearby building and then drove by respondent as she walked the children home. The district court found that appellant's conduct substantially adversely affected respondent's security, safety, and privacy. This appeal follows.

## **DECISION**

Whether the district court has statutory authority to grant an HRO presents a question of statutory interpretation, which this court reviews de novo. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008). We will not set aside the district court's findings of fact relating to an HRO unless they are clearly erroneous. *Kush v.*

*Mathison*, 683 N.W.2d 841, 843–44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). Ultimately, we review the issuance of an HRO for an abuse of discretion. *Peterson*, 755 N.W.2d at 761.

A district court may grant an HRO if it “finds . . . 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 . . . .” Minn. Stat. § 609.748, subd. 1(a)(1). The HRO statute requires proof of both: (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 (quotation omitted). The harasser’s intent may be considered under a subjective standard. *Kush*, 683 N.W.2d at 845. But inappropriate or argumentative statements alone cannot be considered harassment. *Beach v. Jeschke*, 649 N.W.2d 502, 503 (Minn. App. 2002).

Appellant argues that the district court erred by granting the HRO based on conduct that occurred during the term of the prior HRO. He argues that issuing a new HRO based on this conduct impermissibly extended the prior HRO beyond the two-year period permitted by statute. *See Roer v. Dunham*, 682 N.W.2d 179, 181 (Minn. App. 2004) (concluding that, under the relevant statute, which allowed an HRO for a fixed period not to exceed two years, a court could not extend the HRO beyond its initial two-year period). But this court in *Roer* concluded that, because the district court had based

its HRO on “recent events, not on the events on which the initial order was based,” the district court had effectively issued a new restraining order, and the two-year limitation period was not implicated. *Id.* at 182. This court ultimately concluded that the findings were insufficient to support the HRO because the district court specified only one incident of harassment. *Id.*

Appellant argues that the district court improperly attempted to extend the terms of the prior HRO beyond the two-year statutory limitation period because the court based its findings only on events that occurred during the term of the prior HRO, rather than on “recent events.” But here, as in *Roer*, the district court based the HRO on *new conduct*, rather than conduct that supported issuance of the prior HRO. Therefore, it was not extending the prior HRO, but issuing a new one, based on appellant’s later conduct. *See id.* And simply because appellant engaged in prohibited conduct during the period covered by the prior HRO, the district court was not precluded from using that conduct to support the issuance of the new HRO.

Appellant also argues that the district court failed to make findings on all of the incidents alleged in respondent’s petition. Although the district court did not issue findings on all of the numerous allegations in respondent’s petition, the court made specific findings relating to both the May 2007 and the May 2008 incidents. These findings were based on testimony and documents before the court and provided a factual basis for issuing the HRO. *See Kush*, 683 N.W.2d at 844 (stating that findings in support of HRO must be based on testimony and documents admitted at hearing). The district court’s findings are sufficiently specific and appropriately based on the record.

Appellant maintains that the evidence does not support the district court's conclusion that his conduct in the two incidents had "a substantial adverse effect on [respondent's] safety, security, or privacy" or that respondent had "an objectively reasonable belief" of such an effect. *See* Minn. Stat. § 609.748, subd. 1(a)(1); *Peterson*, 758 N.W.2d at 764 (quotation omitted). But respondent testified that, in the May 2007 incident, appellant pulled his car a couple of spaces away from hers, started crying, stated that he was going to die, and asked her to go to counseling. She reported this to the St. Louis Park police, and appellant pleaded guilty to a petty misdemeanor as a result of the incident. Regarding the May 2008 incident, respondent's domestic advocate testified that, as respondent was walking home with the children from a supervised-visitation location, respondent saw appellant waiting for her behind a building. This behavior violated a program rule that a visiting parent should leave 15 minutes before the other parent arrived. The advocate testified that respondent appeared "scared" and "shaken up" as a result of this incident.

Although appellant does not contest the factual basis relating to either incident, he maintains that respondent presented no evidence demonstrating an intent to harass her. But the HRO statute only requires proof of *either* "objectively unreasonable conduct *or* intent on the part of the harasser." *Peterson*, 758 N.W.2d at 764 (emphasis added) (quotation omitted). Therefore, although the district court's findings could have been more explicit, the district court could reasonably have concluded that appellant engaged in "objectively unreasonable conduct," which supported the issuance of the HRO, even without proof of appellant's intent to harass respondent. *See id.*

The record contains sufficient evidence from which the district court could have found that appellant's conduct had a substantial adverse effect on respondent's privacy and that she had an objectively reasonable belief of that adverse effect. The district court did not abuse its discretion by determining that appellant's conduct met the standards for granting an HRO.

**Affirmed.**