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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0202**

Erik Anderson, et al., petitioners,
Respondents,

vs.

David Robert Weber,
Appellant.

**Filed November 13, 2017
Affirmed
Jesson, Judge**

Chisago County District Court
File No. 13-CV-16-599

Patrick A. Doran, Miller & Stevens, P.A., Forest Lake, Minnesota (for respondents)

Daniel M. Gallatin, Gallatin Law, PLLC, Hugo, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

JESSON, Judge

In this neighbor-harassment case, appellant David Weber challenges the district court's determination that spreading animal-carcass mulch along the property line and placing barrels with profanity written on them facing the neighbor's windows constituted grounds for a harassment restraining order. We affirm.

FACTS

Carol Amundson owns a farm in rural Scandia, and appellant David Weber has lived there since 2012. The farm has a variety of animals, and Weber helps Amundson with farming operations. Respondents Erik and Sarah Anderson, with their two daughters, moved from Mounds View to a property next to Amundson in 2012. The Andersons were initially on good terms with Weber. The Andersons were not bothered by any smells from the farm, and Weber was receptive to the idea of the Anderson children visiting the farm to help with animals. But the relationship became rocky in the summer of 2016, when law enforcement officers responded to a report of a cow carcass on Amundson's property. Officers discovered a rotting cow carcass and issued Weber a citation. The Andersons were not responsible for the report, but Mr. Anderson believes it was because of this event that Weber started to harass and target his family in various ways.

In August 2016, only a few days after the cow-carcass citation, the Anderson daughters were playing on a trampoline. Ms. Anderson was inside when she heard several gunshots. She ran outside and found her daughters crying and Weber about a hundred feet away from her children. She had a hard time deciding whether to call the police because she was fearful of repercussions, but she decided to alert them to the gunshots near her children. Officers arrived, and while no arrests were made, the officers did walk around the area. While walking the property line, officers noticed what appeared to be "mulched up animal carcasses." The mulch was directly in front of the Andersons' property, and it smelled garbage-like and was surrounded by flies. After this incident, an officer advised the Andersons to file for a harassment restraining order (HRO).

A few days later, barrels with writing on them started appearing on Amundson's property. The barrels directly faced the Andersons' property, outside of their living and dining room windows, but were not within the view of the street or other neighbors. Some of the barrels contained phrases including: *F.U.*; *F.U. little man*; *co-workers doing wife*; and *how's life buddy*. Other barrels did not include writing, while some had seemingly harmless writings like *H2O*. The Andersons planted trees to block the sight of the barrels, but more barrels appeared.

Apart from the barrels, chalkboard signs started to appear on Amundson's property near her driveway facing the street. The writing on the chalkboard signs changed often, but included phrases such as: *Now how's life. Having fun?*; *sore neck looking over shoulder? Never know when. Hands up don't shoot; Game on; shoot first; who is next;* and *I want to eat you*. The parties dispute whether these chalkboard signs were directed at the Andersons.

After these events, the Andersons filed for an ex parte HRO, which was granted. Weber requested a hearing, which took place in November 2016. Nine people testified, including the parties, law enforcement, and neighbors. The Andersons testified there were other forms of harassment besides the mulch, gunshot incident, barrels, and chalkboard signs, including an incident where Weber yelled "F.U."¹ while looking at the Andersons. The parties dispute whether this yelling was directed at the Andersons. The Andersons further stated that they believed the barrels were directed toward them since no one else

¹ It is unclear from the record whether Weber yelled the abbreviated or unabbreviated version of the phrase.

can see them. The Andersons do not like to let their children go outside because of Weber, and they do not like them to be home alone. And they explained that they are afraid of Weber and “feel for the safety of their children.” Since these events, the Andersons installed alarm and video motion systems, and took self-defense classes. Additionally, the Andersons testified that they walk one of their daughters to the school bus because she is afraid of gunshots that occur around 7 a.m. They also take different driving routes with the children to avoid looking at the chalkboard signs.

Weber testified that the chalkboard signs are not directed toward the Andersons, but instead at the police, who have harassed him before. The chalkboard signs started after the cow-carcass citation as a “stress relief thing,” and according to Weber, are a commentary on news and political issues. Weber denied there was any carcass mulch and stated there was only brewer’s grain.² Finally, Weber testified that he did not think he ever shot near the Andersons’ property.

A law enforcement officer testified that he was concerned for the Andersons because of the “overall behavior on [Amundson’s] property seems to be directed towards the Andersons.” And a neighbor described the barrels as “derogatory” and said the Andersons’ concerns for safety for themselves and their children are “valid.” A different neighbor testified that the chalkboard signs did not appear to be directed at anyone, and that gunshots are common in the neighborhood.

² Amundson and Weber receive spent grain from a brewery, and use that grain to both feed their animals and to place it on compost piles to help reduce the odor. Amundson also testified there is brewer’s grain that is spread out around the property, and that it is used to keep compost piles on the farm from smelling.

After the hearing, the district court granted an amended³ HRO effective for two years. The court found both Andersons credible. In its order, the court found that Weber spread mulch containing animal remains on the property line, shot his gun within 100 feet of the Andersons' children, placed barrels with obscene messages on them directly facing the Andersons' home, yelled "F.U." to the Andersons, and fired his gun while the children were getting on the school bus. The court found that these incidents caused the Andersons to fear for their safety, security, and privacy. The order prevents Weber from coming within ten feet of the Andersons' property and directs him to remove the offensive barrels and mulched substance. Weber appeals.

DECISION

Harassment is defined as "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) (2016). To constitute harassment, the statute "requires both objectively unreasonable conduct or intent on the part of the harasser and an objectively reasonable belief on the part of the person subject to harassing conduct." *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Weber argues that the district court abused its discretion in granting the HRO because there was not sufficient evidence to (1) show that there were repeated incidents of intrusive or unwanted acts, words, or gestures; or to (2) show that his conduct had a

³ The original order stated Weber could not be within 500 yards of the Andersons' property, but this was later changed to ten feet.

substantial adverse effect, or was intended to have a substantial adverse effect, on the safety, security, or privacy of the Andersons. An issuance of an HRO is reviewed for abuse of discretion, but whether the facts found satisfy the elements required for an HRO presents a question of law, which this court reviews de novo. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

I. The district court did not abuse its discretion by determining that there were repeated incidents of intrusive or unwanted acts, words, or gestures.

For an HRO to be granted, the Andersons must establish that there were repeated incidents of intrusive or unwanted acts, words, or gestures by Weber. Minn. Stat. § 609.748, subd. 1(a)(1). Here there is sufficient evidence to support the district court's findings that this requirement was met: Weber positioned barrels with negative writings on them outside of the Andersons' home and he spread mulch containing animal remains near the property line. The side of the barrels with the writing were positioned to directly face the Andersons' windows. In addition, the timeline of events suggests a retaliatory motive. The barrels appeared within a few days after law enforcement issued Weber a citation for a rotting cow carcass on Amundson's property. Considering only the barrels with negative comments and the mulch containing animal remains, as well as the timeline of events, we conclude there was sufficient evidence of repeated incidents of intrusive or unwanted acts for the district court to determine this was objectively unreasonable conduct.

Weber argues that the record does not support some of the conduct being attributed to him, and that the district court's findings of fact are not supported by the record. He specifically contends the district court erred by determining he was the one who fired the

gun and by determining his yelling of “F.U.” was directed at the Andersons. But we need not reach this issue because the conduct involving the barrels and mulch is sufficient on its own to constitute repeated incidents of intrusive or unwanted acts. Any findings about the other conduct that could be erroneous would not warrant reversal as there is still a substantial basis for the HRO. *See* Minn. R. Civ. P. 61 (stating any flawed findings of fact warrants reversal only if the error affects a substantial right of a party).

Weber further argues that the record does not support the district court’s decision because his behavior is objectively reasonable and not threatening. More specifically, he states that firing guns, writing on chalkboard signs, laying down mulch, and cursing are all common behavior on agricultural property. Because the Andersons were new to living in a rural area, they were unfamiliar with what living next to a farm entails, Weber contends. But placing barrels with derogatory language on them facing a neighbor’s house and spreading mulch containing animal remains on the property line is not commonplace in rural areas. Weber provides no evidence to the contrary. Certainly none of the neighbors at trial, two of whom testified in support of Weber, testified that barrels with derogatory comments or animal-carcass mulch spread along a property line were common in the neighborhood. In fact, in denying any animal-carcass mulch was on the property, Amundson explained that she would never do that because it would be “rude.”

After a careful review of the record, we conclude that the evidence supports the district court’s determination that there were repeated incidents of intrusive or unwanted acts.

II. The district court did not abuse its discretion by determining that Weber's conduct had a substantial adverse effect or was intended to have a substantial adverse effect on the safety, security, or privacy of the Andersons.

For an HRO to be granted, the Andersons must also establish that Weber's conduct caused, or was intended to cause, a substantial adverse effect on their safety, security or privacy. Minn. Stat. § 609.748, subd. 1(a)(1). There must be "an objectively reasonable belief on the part of the person subject to harassing conduct." *Dunham*, 708 N.W.2d at 567. Here there is sufficient evidence to support the district court's findings that the Andersons met this requirement. The Andersons testified that Weber created an unsafe environment for them, and they are in "desperate fear of him, and the safety of [their] family." The record is replete with examples of the Andersons taking precautions due to their fear: they installed alarm systems and took self-defense classes. While these are examples of subjective concern from the Andersons, there is sufficient evidence in the record to support the determination that these concerns were objectively reasonable. A law enforcement officer testified that he was very concerned for the safety of the Andersons in light of Weber's behavior, and a neighbor testified that he believed the Andersons' concerns for their safety were valid.

Weber argues that the Andersons did not show that some of the alleged harassing conduct specifically caused any adverse effects. For example, he states the Andersons did not explicitly state the writing on the barrels caused fear. This argument is unpersuasive. First, it relies on attacking the Andersons' subjective concerns, while the standard is objective. Second, while Weber is correct that the Andersons did not testify that each specific incident caused fear, his argument is not supported by the record as a whole.

Ms. Anderson testified the barrels made her feel like Weber is targeting her family, and more importantly, the Andersons testified that Weber's conduct as a whole causes them to fear for their safety. Weber does not point to any legal authority that shows that each alleged incident must cause subjective concerns, as opposed to a cumulative effect.

Because the record sufficiently supports the finding of repeated unwanted acts with substantial adverse effects in the district court's detailed and thorough order, the district court did not abuse its discretion in granting the HRO.

Affirmed.