This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1460

William Jay Tietz,
Respondent,

vs.

Janice Mae Tietz,
Appellant.

Filed March 31, 2025
Affirmed
Florey, Judge[*]

Douglas County District Court
File No. 21-CV-24-1115

William Jay Tietz, Kensington, Minnesota (pro se respondent)

Jessica Faunce, Legal Services of Northwest Minnesota, Alexandria, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bond, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

Appellant-wife challenges a harassment restraining order (HRO) issued in favor of respondent-husband, arguing that the district court abused its discretion because its factual

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

findings are unsupported by the record and her conduct does not constitute harassment. We affirm.

FACTS

Appellant Janice Mae Tietz (wife) and respondent William Jay Tietz (husband) were married in 2003. The parties have lived together in a mobile home located in Kensington, Minnesota, for 22 years. They also have a garage located two lots away from their home, out of which husband operates an auto-repair business. Wife's primary use of the garage has been as a place to park her car during the winter.

In early 2024, husband suffered unknown medical issues and was hospitalized for approximately two months. On May 29, wife filed for and was granted an order for protection (OFP) against husband, preventing him from returning to the parties' home upon his release from the hospital.

The district court held a hearing on June 10, after which it filed a final OFP prohibiting husband from having contact with wife and requiring him to stay 100 feet away from their shared residence. The final OFP expressly permitted husband to access the garage. The district court found the basis for the OFP to be that acts of domestic violence, including "choking, hitting, [and] name calling," had occurred.

Approximately one month later, on July 15, husband filed a petition for an HRO against wife. In the petition, husband alleged that wife had (1) called the sheriff's office and told them he was not supposed to be in the garage, (2) changed the locks on the front door of the garage, (3) screwed the back door of the garage shut, and (4) went through his belongings as though "taking inventory." The district court granted an ex parte HRO.

A harassment hearing was held on August 19. At the hearing, husband appeared pro se and wife appeared with counsel. Husband testified consistently with facts presented above. Wife testified that she is "scared to death" and stays inside the house when husband is out in the garage. Wife did not otherwise dispute husband's allegations.

Following the parties' testimony, the district court orally granted an HRO against wife. The court explained that its order was primarily based on wife "going into the garage." The district court reasoned that, considering the OFP, this conduct constituted harassment because husband uses the garage for his business and wife has "no legitimate reason . . . to go there."

Later that day, the district court filed a written HRO using a form order, which prohibited wife from having contact with husband and from being within 100 feet of the garage. The form order allowed the district court to check off boxes with various prewritten findings. Using a combination of the check boxes and written-in additions, the court found that there were reasonable grounds to believe wife "engaged in harassment which ha[d] or [was] intended to have a substantial adverse effect" on husband's safety, security, or privacy because (1) wife made threats against husband by calling the sheriff's office and reporting that he was not supposed to be in the garage; (2) wife damaged husband's property by "screw[ing] [the] back door closed, chang[ing] locks, [and going] through [his] belongings"; and (3) wife "entered [the] garage where [husband] works knowing that [she] has an OFP against him."

Wife appeals.[1]

DECISION

A district court may grant an HRO if it finds that "there are reasonable grounds to believe that the respondent has engaged in harassment." Minn. Stat. § 609.748, subd. 5(b)(3) (2024). 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." Minn. Stat. § 609.748, subd 1(a)(1) (2024). This definition requires "both objectively unreasonable conduct or intent" on the part of the harasser and an "objectively reasonable belief" on the part of the person being harassed. *Dunham v. Roer*, 708 N.W.2d 552, 567 (Minn. App. 2006).

We review a district court's decision to grant a petition for an HRO for an abuse of discretion. *Kush v. Mathison*, 683 N.W.2d 841, 843 (Minn. App. 2004), *rev. denied* (Minn. Sept. 29, 2004). A district court abuses its discretion when it makes findings of fact that are unsupported by the evidence, misapplies the law, or renders a decision that is against logic and the facts in the record. *Wilson v. Wilson*, 11 N.W.3d 331, 339 (Minn. App. 2024), *rev. denied* (Minn. Dec. 17, 2024). We will only set aside a district court's factual findings pertaining to an HRO if they are clearly erroneous after giving due regard to its credibility determinations. *Peterson v. Johnson*, 755 N.W.2d 758, 761 (Minn. App. 2008).

[1] Husband has not filed a brief in this appeal. We therefore consider the merits of the case pursuant to Minn. R. Civ. App. P. 142.03.

Here, wife contends that the district court abused its discretion by granting the HRO because (1) the record does not support its finding that she harassed husband by damaging his property, (2) it failed to make factual findings regarding her intent, (3) it erred by finding that certain conduct constituted harassment, and (4) it erred by finding that her actions had or were intended to have a substantial adverse effect on husband's safety, security, or privacy. We address each argument in turn.

I. The district court did not clearly err by finding that wife harassed husband by damaging his property.

Wife argues that the evidence in the record does not support the district court's finding that she damaged husband's property by (1) screwing the garage door closed, (2) changing the locks on the garage,[2] and (3) rifling through husband's belongings (collectively, wife's "actions"). Alternatively, wife argues that her actions do not constitute harassment.

A. The evidence in the record supports the district court's finding.

Wife contends that "no evidence [was] presented at the HRO hearing" to support the district court's finding that her actions damaged husband's property because husband failed to provide photographic evidence or other evidence of repair. This argument is

[2] Wife suggests that the record is unclear as to whether the locks she was alleged to have changed belonged to the garage. But husband's testimony clearly associates the changed locks with the garage, supporting the district court's implicit finding to that effect. *See In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 222 (Minn. 2021) (explaining that, under the clear-error standard, we review the "record to confirm that evidence exists to support" a district court's finding); *Vettleson v. Special Sch. Dist. No. 1*, 361 N.W.2d 425, 428 (Minn. App. 1985) (noting that implicit findings of fact are reviewed for clear error).

unavailing. Husband's testimony is evidence. *See Black's Law Dictionary* 696 (12th ed. 2024) (defining "evidence" to include testimony). And district courts may make factual findings based upon testimony alone. *See Quinn v. LMC NE Minneapolis Holdings, LLC*, 972 N.W.2d 881, 889 (Minn. App. 2022) (stating that "bare testimony" is sufficient to support a factual finding), *rev. granted* (Minn. June 29, 2022) *and appeal dismissed* (Minn. Feb. 17, 2023).

Wife also argues that the district court erred by construing her actions as "property damage." She asserts that "it is generally understood that changing locks does not constitute property damage," and looking through someone's property is "not the same as damaging it." We are not convinced.

Notably, the "property damage" language with which wife takes issue was part of the prewritten text of the form order. By contrast, the district court identified in a handwritten finding that wife "screwed [the] back door closed, changed locks, [and] went through belongings." Given the inherent limitations of a form order, we view the district court's handwritten additions as more important than the order's prefabricated language.

Furthermore, we agree with the district court's assessment that wife's actions were damaging to husband. Changing the locks and screwing the garage door closed are clear attempts to prevent husband from accessing property he has a lawful right to occupy. And rooting through husband's belongings is damaging to his sense of privacy and security. Because the district court's finding is supported by evidence in the record—particularly when the form-order format is taken into consideration—we conclude that it did not clearly err.

B. The district court did not clearly err by finding that wife's actions constitute harassment.

Alternatively, wife asserts that her actions cannot constitute harassment because (1) the garage and the items contained therein are "marital property," and (2) her actions only "reinforced what the court had already ordered" when it prohibited husband from accessing the garage through the ex parte OFP. We disagree.

First, wife's "marital property" argument is premature. "[W]hether property is marital or nonmarital is a question of law." *Gill v. Gill*, 919 N.W.2d 297, 301 (Minn. 2018) (quotation omitted). During a dissolution proceeding, a district court must "classify" property as marital before it can be divided between spouses. *Id.* at 302. Here, there is no pending dissolution proceeding between the parties. And the record before this court is insufficient to allow for a marital-property classification to be made. Moreover, wife provides no authority to support the proposition that a spouse cannot damage marital property.

Second, our review of the record does not support wife's assertion that the ex parte OFP prohibited husband from accessing the garage. The garage and the parties' home are located on distinct "lots" of land; they are located on the same street but have separate addresses. The ex parte OFP—which wife contends was in effect at the time husband would have been impacted by her actions—prohibits husband from approaching the mobile home but says nothing about the garage. While the final OFP expressly specifies that its distance requirement "does not extend to the [garage]," we are not persuaded that this inclusion means that the ex parte order prohibited husband's garage access. The inclusion,

which the district court placed in parentheses, could just as easily be construed as clarifying language as to the scope of the otherwise unchanged order.

Furthermore, the record contains conflicting evidence about exactly how far away the garage is from the parties' home, undermining any argument that the ex parte OFP prohibited husband from accessing the garage based solely on its distance requirement. In her testimony, wife indicated that the garage is less than 100 feet from the parties' residence. On the other hand, husband testified both that the garage was "over 150 feet from the house" and that the distance was approximately "one block" due to the intervening lot. Appellate courts do not reweigh conflicting testimony. *See Kenney*, 963 N.W.2d at 222. On this record, we discern no clear error in the district court's finding that wife's actions constituted harassment.

II. The district court made sufficient findings regarding wife's intent in calling the sheriff on husband.

Wife argues that the district court clearly erred by failing to make specific findings that she had improper intent when she called the sheriff's office. To support her argument, wife relies on *Peterson*, 755 N.W.2d 758.

In *Peterson*, this court considered whether a father's call to police to report the lack of a child-safety seat in the back of his ex-wife's boyfriend's truck—where father's child was riding—was an instance of harassment of boyfriend when a child-safety seat was not required by law. *Id.* at 765-66. This court concluded that, because reports to police are a "useful means of promoting public safety" that should not be deterred, a "district court must make sufficiently specific findings of an improper intent so as to overcome the

presumptively valid reason for the report" to find that it constituted harassment. *Id.* at 765-66. Applying this principle, this court determined that the district court's findings did not establish improper intent because the underlying record did not support that father *knew* that boyfriend was *not* violating the law when he called police. *Id.* at 765-66.

Here, wife contends that the district court's order does not comply with the rule articulated in *Peterson* because it does not "make *any* findings regarding [wife's] intent." But the court expressly addressed wife's intent when it found both that wife harassed husband by "call[ing] the sheriff's office [and telling] them he wasn't supposed to be at the [garage]," and that "the harassment has or is *intended* to have a substantial adverse effect on [husband's] safety." (Emphasis added.) These findings are supported by the record. Wife testified that she understood that the OFP allows husband access to the garage and she did not dispute that she, nevertheless, called the sheriff regarding husband's presence there. This evidence provides a reasonable basis for the district court's implicit determination that, unlike in *Peterson*, wife knew that husband was not violating the OFP at the time that she called the police. *Id.* We conclude that the district court made sufficient findings related to wife's intent in calling the sheriff on husband.

III. The district court did not clearly err by finding that wife's entrance into the garage constituted harassment.

Wife argues that the district court clearly erred by finding that her entrance into the garage where husband works constitutes harassment because there is no evidence that she entered the garage while husband was present.[3] We are not persuaded for two reasons.

First, contrary to wife's assertion, husband testified that one of the reasons he sought the HRO was because wife was "out yelling at [him]." This testimony clearly indicates that wife has been physically present in or, at the very least, near the garage at the same time as husband.

Second, whether wife's entrance to the garage overlapped with husband's presence is beside the point. The district court's oral order makes clear that it found wife's testimony incredible and determined that wife's presence in the garage—where husband works—was an attempt to get him to violate the OFP she has against him. The district court found that (1) husband "is the one who uses the garage for his business," (2) wife knows this and knows husband was "granted use of the garage in the OFP," and (3) there is "no legitimate reason for [wife] to go there." We defer to these factual findings because they are supported by evidence in the record and rest on credibility determinations made by the district court. *See Kush*, 683 N.W.2d at 843-44.

Importantly, a district court may consider the relationship history of the parties when "deciding whether [a] harasser's conduct was 'objectively unreasonable' and whether the

[3] Wife also suggests that her entrance to the garage cannot constitute harassment because the garage is marital property. As described above, this argument is unavailing.

allegations from [a] person allegedly being harassed constitute an 'objectively reasonable belief.'" *Wilson*, 11 N.W.3d at 338 (citing *Dunham*, 708 N.w.2d at 567). Here, considering the OFP and wife's purported fear of husband, it is objectively unreasonable for her to voluntarily enter a space that she knows husband must occupy often for work.[4] And the parameters of the OFP render it objectively reasonable for husband to construe wife's presence in the garage as a threat to his security and privacy, particularly considering her call to police. Accordingly, we discern no clear error in the district court's finding that, in the context of the parties' relationship, wife's entrance into the garage constituted harassment.

IV. The district court did not abuse its discretion by finding that wife's conduct has or was intended to have a substantial adverse effect on husband.

Wife asserts there is no evidence in the record to support the finding that her conduct had or was intended to have a substantial adverse effect on husband's safety, security, or privacy. *See* Minn. Stat. § 609.748, subd. (1)(a)(1). But, as the preceding analysis demonstrates, the record contains evidence that wife's conduct did have a substantial adverse effect on husband. Husband testified that wife's call to police resulted in an attempted arrest. *Cf. Peterson*, 755 N.W.2d at 766 (concluding that a call to police did not adversely impact privacy in part because no police investigation was actually conducted). And wife's actions of changing the locks and screwing the garage door shut—which she

[4] Wife's brief to this court suggests that her purpose in entering the garage was to take stock of assets in preparation for a future dissolution action. But wife did not provide testimony to this effect nor present this argument to the district court. Therefore, we do not consider this assertion on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

did not dispute at the hearing—were attempts to restrict husband's access to property he had a lawful right to access. *See Kush*, 683 N.W.2d at 844 (describing "blocking or restricting access to . . . property" as harassment).

Beyond this, the record supports the district court's determination that wife intended her actions to have a substantial adverse effect on husband. A district court may employ a "subjective standard" when determining a harasser's intent. *Id.* at 845. "Because intent is a state of mind, it is generally determined by inferences drawn from the person's words or actions in light of all the surrounding circumstances." *State v. Bock*, 490 N.W.2d 116, 120 (Minn. App. 1992), *rev. denied* (Minn. Aug. 27, 1992). As described above, wife testified that she understood the OFP to permit husband access to the garage. She further testified that husband goes to the garage "quite often." And wife did *not* testify that she, personally, has reason to use the garage. Considered in the context of the OFP, this testimony supports the district court's determination that wife's conduct—all of which was related to the garage—was intended to adversely affect husband. As the district court determined, there is no other "legitimate reason" for her actions.

Although we are mindful of the OFP between the parties and the circumstances underlying that order, the record before this court supports the district court's harassment-related findings. Accordingly, we conclude that the district court did not abuse its discretion in issuing the HRO against wife.

Affirmed.