STANDPOINT

Attorneys & advocates against domestic & sexual violence

2018 Summary of Domestic Abuse Act & Harassment Restraining Order Cases

A Summary of Published and Unpublished Minnesota Decisions Interpreting the Domestic Abuse Act – Minn. Stat. § 518B.01 and Harassment Restraining Orders – Minn. Stat. § 609.748

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PUBLISHED AND UNPUBLISHED COURT OPINIONS

Definitions of Legal Terms

There are two types of cases in this summary – published and unpublished. Minnesota Statutes § 480A.08, subd. 3, states that "unpublished opinions of the Court of Appeals are not precedential."

> **PRECEDENT:**
> A case which establishes legal principles to a certain set of facts, coming to a certain conclusion, and which is to be followed from that point on when similar or identical facts are before a court. Precedent forms the basis of the theory of *stare decisis* which prevents "reinventing the wheel" and allows citizens to have a reasonable expectation of the legal solutions which apply in a given situation.
> http://www.duhaime.org/diction.htm

> ***STARE DECISIS:***
> A basic principle of the law whereby once a decision (a precedent) on a certain set of facts has been made, the courts will apply that decision in cases which subsequently come before it, embodying the same set of facts. A precedent which is binding must be followed.
> http://www.duhaime.org/diction.htm

Also, "unpublished opinions must not be cited unless the party citing the unpublished opinion provides a full and correct copy to all other counsel at least 48 hours before its use in any pretrial conference, hearing, or trial." Minn. Stat. § 480A.08, subd. 3. Both attorneys and *pro se* litigants must follow this procedure if they wish to use an unpublished case. *Pro se* litigants are held to the same standard as attorneys if they choose to represent themselves in court. If this procedure is not followed, the court should not allow the party to cite an unpublished case, nor should the court give the unpublished case any weight in its decision.

> ***PRO SE:***
> Latin: in one's personal behalf. A person who acts as her own attorney.

As they do not set precedent, unpublished decisions are merely persuasive authority for the district court. Minnesota law sets up a strict standard for publishing opinions. "The Court of Appeals may publish only those decisions that:

(1) establish a new rule of law;
(2) overrule a previous Court of Appeals decision not reviewed by the Supreme Court;
(3) provide important procedural guidelines in interpreting statutes or administrative rules;
(4) involve a significant legal issue; or
(5) would significantly aid in the administration of justice."

Minn. Stat. § 480A.08, subd. 3. Many decisions do not do any of these things; therefore, they are not published.

> ***EX PARTE***
> adj. Done or made at the instance and for the benefit of one party only, and without notice to, or argument by, any person adversely interested; of or relating to court action taken by one party without notice to the other, usu. for temporary or emergency relief; an ex parte hearing; an ex parte injunction. Black's Law Dictionary (8th ed. 2004)

> **HOLDING:**
> 1) n. Any ruling or decision of a court. http://dictionary.law.com/

Many cases have very specific facts and their holdings apply only to the parties involved.

SUBJECT INDEX
OF DOMESTIC ABUSE & HARASSMENT RESTRAINING ORDER CASES

DOMESTIC ABUSE CASES

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Mou v. Yang, No. A10-161 (Minn. Ct. App. Dec. 28, 2010) (UNPUBLISHED) (procedural due process right not infringed where testimony and evidence was limited due to irrelevancy).
Oberg v. Bradley, 868 N.W.2d 62 (Minn. Ct. App. 2015) (Inclusion of minor child's out of court statements did not violate Respondent's right to due process)
Rew v. Bergstrom, 845 N.W.2d 764 (Minn. 2014) (OFP extension to 50 years is constitutional).
Rew v. Bergstrom, 812 N.W.2d 832 (Minn. Ct. App. 2012), *aff'd in part, rev'd in part*, 845 N.W.2d 764 (Minn. 2014) (fifty-year OFP statute does not violate free speech because it restricts contact with an abuse victim rather than the message intended to be expressed by the abuser, does not require a defendant to be notified of collateral consequences when pleading guilty to an offense, is not a denial of parent's due process rights, is not a violation of the double jeopardy clause).
Schanze v. Schanze, A15-0231 (Minn. Ct. App. December 14, 2015) (UNPUBLISHED) (due process rights not violated when OFP petition includes allegations of threats, and appellant was given meaningful opportunity to be heard)
Shaw v. Sikora, No. A10-117 (Minn. Ct. App. Nov. 2, 2010) (UNPUBLISHED) (court of appeals does not address constitutional matter that is not presented to district court).
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Mosser ex rel. Behnke v. Behnke, No. A05-1166 (Minn. Ct. App. May 23, 2006) (UNPUBLISHED) (procedural requirements have no bearing on district court's ex parte order).
Olson v. Olson, No. C7-02-344 (Minn. Ct. App. Sept. 10, 2002) (UNPUBLISHED) (jurisdiction over custody matter under UCCJEA).
Randall v. Coleman, No. C3-93-851 (Minn. Ct. App. Jan. 4, 1994) (UNPUBLISHED) (general appearance in court sufficient for jurisdiction).

Sovick v. Rud, No. C1-94-1619 (Minn. Ct. App. Feb. 21, 1995) (UNPUBLISHED) (court may convert matter to harassment proceeding).
Svendsen v. Strange, No. A07-166 (Minn. Ct. App. Feb. 28, 2008) (UNPUBLISHED) (an appeal from an order granting an OFP that would otherwise be moot can be heard if the order resulted in collateral consequences, or real and substantial limitations to the respondent resulting from the order).
Tschida v. Hemmesch, No. A11-1080 (Minn. Ct. App. June 11, 2012) (UNPUBLISHED) (courts have original jurisdiction of all civil and criminal matters).
Zavoral v. Wilson, No. A08-1876 (Minn. Ct. App. June 2, 2009) (UNPUBLISHED) (the provision in Minn. Stat. § 518B.01, subd. 6(a)(4) that allows the court to award custody "with regard to minor children of the parties" relates to the court's authority to grant particular relief, not the court's authority to hear the case).

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Halverson v. Taflin, 617 N.W.2d 448 (Minn. Ct. App. 2000) (right to intervene).
Pechovnik v. Pechovnik, 765 N.W.2d 94 (Minn. Ct. App. 2009) (because collateral consequences attach to an OFP under statute, a claim is not moot even if the underlying OFP has expired by the time the court heard oral arguments).
Schmidt ex rel. P.M.S. v. Coons, 818 N.W.2d 523 (Minn. Aug. 8, 2012) (statute does require that the family or household member on whose behalf the OFP petition is initiated must have suffered domestic abuse).
Sperle v. Orth, 763 N.W.2d 670 (Minn. Ct. App. 2009) (former relationship may qualify as a significant romantic or sexual relationship).
Sweep v. Sweep, 358 N.W.2d 451 (Minn. Ct. App. 1984) (custody).
Tschida v. Hemmesch, No. A11-1080 (Minn. Ct. App. June 11, 2012) (UNPUBLISHED) (Domestic Abuse Act applies to those who are currently in a romantic or sexual relationship and those who have previously engaged in a romantic or sexual relationship).

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Courtney v. McReynolds, No. A15-0578 (Minn. Ct. App. Jan. 4, 2016) (UNPUBLISHED)(defective service cannot be raised as a defense when a party acknowledges receipt of a petition and requests a hearing himself. And the Court has broad discretion to deny request for a continuance.
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D
Daniels v. Welch, No. A06-1335 (Minn. Ct. App. June 12, 2007) (UNPUBLISHED) (finding based on incident not in affidavit not prejudicial).
DeFatte v. DeFatte, No. A09-1367 (Minn. Ct. App. May 18, 2010) (UNPUBLISHED) (OFP is justified if a person manifests a present intent to inflict fear of imminent physical harm, bodily injury, or assault on the person's spouse).
Dittes v. Dittes, No. C0-95-1945 (Minn. Ct. App. Feb. 27, 1996) (UNPUBLISHED) (right to hearing with cross-examination).

E
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Gold v. Larsen, No. A06-665 (Minn. Ct. App. Mar. 13, 2007) (UNPUBLISHED) (filling in form sufficient finding of domestic abuse for extension).

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Hafermann ex rel. Hafermann v. Hafermann, No. A10-591 (Minn. Ct. App. Jan. 4, 2011) (UNPUBLISHED) (oral amendment to an OFP not sufficient when not accompanied by an affidavit with specific facts).
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Nohner v. Anderson, 446 N.W.2d 202 (Minn. Ct. App. 1989) (full hearing within fourteen days).

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Olson v. Olson, No. C7-02-344 (Minn. Ct. App. Sept. 10, 2002) (UNPUBLISHED) (respondent was denied full hearing when not allowed to question witnesses on relevant matters).

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Sapp v. Nelson, No. C7-96-1726 (Minn. Ct. App. May 20, 1997) (UNPUBLISHED) (child's OFP petition converted to post-decree matter still needs hearing and findings).
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Braend v. Braend, 721 N.W.2d 924 (Minn. Ct. App. 2006) (present harm or intent to do present harm only necessary for initial OFP).
Bratsch v. Bratsch, No. A08-1503 (Minn. Ct. App. June 9, 2009) (UNPUBLISHED) (even if an initial request for a subsequent OFP is denied, Minn. Stat. § 518B.01, subd. 6a, does not prohibit a person from submitting a second application for a subsequent OFP).
In re Cusick v. Cusick, No. A08-0557 (Minn. Ct. App. April 21, 2009) (UNPUBLISHED) (prior OFPs may be probative because they aided the district court in determining the credibility of the conflicting testimony).
Ekman v. Miller, 812 N.W.2d 892 (Minn. Ct. App. 2012) (a violation of an OFP, rather than a conviction, will warrant an extension of the OFP).
Ellingsworth v. Wazwaz, No. A15-1583 (Minn. Ct. App. May 16, 2016) (UNPUBLISHED) (In order to order a fifty-year extension to an order for protection, the district court must find that "the respondent has violated a prior or existing order for protection on two or more occasions" or that "the petitioner has had two or more orders for protection in effect against the same respondent.")
Gold v. Larsen, No. A06-665 (Minn. Ct. App. Mar. 13, 2007) (UNPUBLISHED) (filling in form sufficient finding of domestic abuse for extension).
Habtesilassie v. Yohannes, No. A07-2324 (Minn. Ct. App. Nov. 25, 2008) (UNPUBLISHED) (district court did not abuse its discretion when it extended an OFP for five years and when it denied appellant's motion to vacate a default judgment after appellant failed to appear at a hearing. District court did abuse its discretion when it imposed a $750 sanction against appellant without first ordering appellant to show cause).
Hill v. Brockamp, No. C2-98-973 (Minn. Ct. App. Jan. 14, 1999) (UNPUBLISHED) (overt physical act not needed for subsequent order).
Knuth v. Knuth, No. C1-92-482 (Minn. Ct. App. June 30, 1992) (UNPUBLISHED) (overt physical act not needed for extension).
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Fitzgerald v. Fitzgerald, 406 N.W.2d 52 (Minn. Ct. App. 1987) (no OFP unless petition filed).
Mechtel v. Mechtel, 528 N.W.2d 916 (Minn. Ct. App. 1995) (no OFP unless petition filed).
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Mechtel v. Mechtel, 528 N.W.2d 916 (Minn. Ct. App. 1995) (cannot require mediation or mediation-type proceeding if domestic abuse).
Vogt v. Vogt, 455 N.W.2d 471 (Minn. Ct. App. 1990) (mediation prohibited if domestic abuse).

EVIDENTIARY ISSUES

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Barona v. Barona-Ayala, No. A07-1616 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED) (evidence that the husband "got in [his wife's] face," called her names, forced her into a bedroom, locked the door, threatened to take her daughter away from her, and slapped her suffices to show that the husband committed domestic abuse).
Bell v. Marvin, No. C6-02-366 (Minn. Ct. App. Nov. 5, 2002) (UNPUBLISHED) (court may consider past acts to determine present intent to harm).
Bernhagen v. Bernhagen, No. A07-1791 (Minn. Ct. App. Sept. 2, 2008) (UNPUBLISHED) (the court's finding that wife proved that domestic abuse occurred encompasses an implicit finding of intent, imminent harm, and reasonable fear).
Bode v. Drumm, No. CX-94-615 (Minn. Ct. App. Oct. 25, 1994) (UNPUBLISHED) (violation of previous OFP evidence for new OFP).
Boecker v. Lorenz, A15-0432 (Minn. App. November 16, 2015) (UNPUBLISHED) (issuance of OFP is appropriate where there is evidence of physical harm, regardless of actor's intent. District court has discretion to consider courtroom demeanor to determine credibility.)
Bragg v. Hudson, No. A06-2431 (Minn. Ct. App. Dec. 31, 2007) (UNPUBLISHED) (a district court may take an adverse inference against a defendant for invoking their Fifth Amendment rights).

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Chosa ex rel. Chosa v. Tagliente, 693 N.W.2d 487 (Minn. Ct. App. 2005) (evidence of neglect and chemical dependency is not sufficient for OFP).
Courtney v. McReynolds, No. A15-0578 (Minn. Ct. App. Jan. 4, 2016) (UNPUBLISHED) (history of physical abuse, stalking-like behavior, and threatening voicemails constitutes reasonable fear)
In re Cusick v. Cusick, No. A08-0557 (Minn. Ct. App. April 21, 2009) (UNPUBLISHED) (prior OFPs may be probative of conflicting testimony).

D
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Evans v. Getty, No. C5-92-405 (Minn. Ct. App. July 7, 1992) (UNPUBLISHED) (repetitive evidence may be excluded).

F
Fonss v. DeMartini, No. A10-1009 (Minn. Ct. App. Feb. 8, 2011) (UNPUBLISHED) (credibility of a witness left to the discretion of the trial court).

G
Gasper v. Gasper, No. A14-2133 (Minn. Ct. App. August 24, 2015) (UNPUBLISHED) (A prior criminal conviction for assaulting his child, a pending criminal charge with similar facts, and other allegations of domestic abuse, provide sufficient support for district court's findings that appellant committed domestic abuse and is a danger to respondent and the three children.)

H
Haliburton v. Jackson, No. C3-02-373 (Minn. Ct. App. Oct. 22, 2002) (UNPUBLISHED) (hearsay and authentication of evidence).
Hassebroek v. Hassebroek, No. C6-99-1862 (Minn. Ct. App. May 23, 2000) (UNPUBLISHED) (credibility of witnesses determined by trial court).
Hatfield v. Anderson, No. C5-94-604 (Minn. Ct. App. Sept. 20, 1994) (UNPUBLISHED) (new evidence grounds for new order).
Hessel v. Mohr, No. A16-1467 (Minn. Ct. App. May 8, 2017) (UNPUBLISHED) (Mere assertion of hearsay allegations of sexual abuse are not sufficient findings of fact to determine the presence or lack thereof of sexual abuse in the home to warrant an OFP).
Holm v. Holm, No. C5-00-1357 (Minn. Ct. App. Apr. 17, 2001) (UNPUBLISHED) (credibility of witnesses determined by trial court).
Hughs v. Cole, 572 N.W.2d 747 (Minn. Ct. App. 1997) (minimal evidence of abuse is sufficient, particularly when not rebutted).

J
In re Johnsen v. Johnsen, No. C1-01-362 (Minn. Ct. App. Oct. 30, 2001) (UNPUBLISHED) (sufficient evidence apart from therapist testimony).

Johnson v. Johnson, No. A03-1436 (Minn. Ct. App. June 1, 2004) (UNPUBLISHED) (polygraph results not admissible).

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Kalamaha v. Kalamaha, No. A03-2030 (Minn. Ct. App. Sept. 28, 2004) (UNPUBLISHED) (fear of imminent physical harm enough for OFP).
Kepler v. Kepler, No. C5-94-1557 (Minn. Ct. App. Feb. 21, 1995) (UNPUBLISHED) (court must allow parties the opportunity to prove authentication of relevant evidence).
Kopylov v. Kopylov, A15-0079 (Minn. Ct. App. August 31, 2015) (UNPUBLISHED) (District court's decision to issue OFP is discretionary and will only be reversed if abuse for abuse of discretion such as no evidentiary support or erroneous findings of fact. Court of Appeals does not reconcile conflicting evidence or determine witness credibility.)
Kronebusch v. Kronebusch, No. A04-429 (Minn. Ct. App. Dec. 28, 2004) (UNPUBLISHED) (no OFP for family members without physical harm or intent).
Kysylyczyn v. Kysylyczyn, No. A09-273 (Minn. Ct. App. Oct. 20, 2009) (UNPUBLISHED) (criminal prosecution or an arrest not required to support an allegation of domestic abuse).

L

In re Children of L.D., No. A04-1187 (Minn. Ct. App. Feb. 1, 2005) (UNPUBLISHED) (OFPs are not hearsay).

M

McIntosh v. McIntosh, 740 N.W.2d 1 (Minn. Ct. App. 2007) (an OFP extension application and the applicant's testimony regarding her fear are sufficient evidence to justify an OFP extension).
McIntyre v. McIntyre, No. A05-1211 (Minn. Ct. App. May 16, 2006) (UNPUBLISHED) (formal findings of the trial court are welcomed and overturned only if clearly erroneous).
Miller v. Rathbun, No. C8-99-938 (Minn. Ct. App. Jan. 4, 2000) (UNPUBLISHED) (affidavit with recanting testimony not part of record if after OFP hearing).
Mokalla v. Mokalla, No. A15-1287 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED) (When history of abusive and threatening behavior exists, intent to inflict fear of imminent bodily harm can be inferred from totality of circumstances. Witnessing a party's physical aggression towards a third-party may be seen as an attempt to inflict fear.)

O

Oberg v. Bradley, 868 N.W.2d 62 (Minn. Ct. App. 2015) (Inclusion of minor child's out of court statements did not violate Respondent's right to due process)
Okland v. Okland, No. C0-99-156 (Minn. Ct. App. July 13, 1999) (UNPUBLISHED) (ex parte communications from individuals not parties is allowed).
Olson on behalf of A.C.O. v. Olson, 892 N.W.2d 837 (Minn. Ct. App. March 13, 2017) (Out of court statements made by children regarding abuse were inadmissible hearsay because therapist didn't testify).

P

Page v. Bostrom, No. C1-00-1856 (Minn. Ct. App. June 19, 2001) (UNPUBLISHED) (credibility of witnesses determined by trial court).

R

Roberts v. Roberts, No. A10-771 (Minn. Ct. App. Jan. 18, 2011) (UNPUBLISHED) (credibility of a witness left to the discretion of the trial court).
Rotter v. Hansen, No. A06-2315 (Minn. Ct. App. May 20, 2008) (UNPUBLISHED) (the district court may direct and restrict the testimony and cross-examination of a pro se litigant who lacks experience).

S
Sanz v. Biele, No. A09-166 (Minn. Ct. App. Dec. 8, 2009) (UNPUBLISHED) (petitioner seeking an OFP must allege and prove domestic abuse).
Schanze v. Schanze, A15-0231 (Minn. Ct. App. December 14, 2015) (UNPUBLISHED) (absent a waiver made by each family member, a marital therapist cannot disclose information received during therapy session) (threats of harm made throughout a marriage, with a purpose to cause grave fear, is sufficient evidence to support OFP)
Seibert v. Anderson, No. A15-0757 (Minn. Ct. App. March 28, 2016) (UNPUBLISHED) (Appellant's admissions, respondent's testimony, and guardian ad litem's testimony related to a conversation with appellant and interviews with the children is sufficient to find an inference of intent to inflict fear of imminent physical harm.)

T
Tanyea v. Tanyea, Nos. A14-1286 and A14-1287 (Minn. Ct. App. February 17, 2015) (UNPUBLISHED) (credibility of the witnesses is determined by the trial court).

Use in other Proceedings
Braend v. Braend, 721 N.W.2d 924 (Minn. Ct. App. 2006) (OFP may be granted regardless of other actions pending between parties).
Pechovnik v. Pechovnik, 765 N.W.2d 94 (Minn. Ct. App. 2009) (OFP has collateral consequences in proceedings to extend an OFP or issue a new OFP, in marital dissolution proceedings, and in future custody disputes).
State v. Hebert, No. C3-91-1882 (Minn. Ct. App. June 6, 1992) (UNPUBLISHED) (OFP testimony cannot be used in criminal proceedings).
State v. Riley, No. C6-98-1169 (Minn. Ct. App. Apr. 13, 1999) (UNPUBLISHED) (evidence of OFP petition can be excluded in criminal proceeding if prejudicial).
Steeves v. Campbell, 508 N.W.2d 817 (Minn. Ct. App. 1993) (testimony cannot be used in criminal proceedings).
In re Matter of Zemple, 489 N.W.2d 818 (Minn. Ct. App. 1992) (can take judicial notice of prior outcome, not of prior testimony).

DOMESTIC ABUSE DEFINED

A
Adams v. Adams, No. C7-95-1652, (Minn. Ct. App. Jan. 23, 1996) (UNPUBLISHED) (father's threat to remove children to another state and the imminent nature of that threat sufficient to constitute the basis for granting an OFP).
A.D.U. v. Kallevig, No. A09-1555 (Minn. Ct. App. June 15, 2010) (UNPUBLISHED) (harassment may constitute domestic abuse and therefore fall under Domestic Abuse Act).
Ahmed v. Hassan, No. A11-980 (Minn. Ct. App. February 13, 2012) (UNPUBLISHED) (verbal threats are enough to issue an OFP).

Andrasko v. Andrasko, 443 N.W.2d 228 (Minn. Ct. App. 1989) (present intent to do harm necessary).
Arnold v. Arnold, No. A14-1097 (Minn. Ct. App. April 27, 2015) (UNPUBLISHED) (a finding of present intent to inflict harm or fear of harm may be supported by the totality of the circumstances).

B

Ball v. Rogers, No. A16-0670 (Minn. Ct. App. Dec. 19, 2016) (UNPUBLISHED) (Threats of danger against mother and children not being technically in violation of any laws sufficient to affirm OFP).
Barona v. Barona-Ayala, No. A07-1616 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED) (conduct inflicting fear of bodily harm constitutes domestic abuse).
In re the Matter of: Ayano Eto Baylor for self and o/b/o Minor v. Baylor, No. A18-0077 (Minn. Ct. App. May 14, 2018) (UNPUBLISHED) (Physical abuse).
Beach v. Beach, No. A04-834 (Minn. Ct. App. Jan. 11, 2005) (UNPUBLISHED) (if second party fears intent to harm third party).
Bernhagen v. Bernhagen, No. A07-1791 (Minn. Ct. App. Sept. 2, 2008) (UNPUBLISHED) (court's finding that wife proved that domestic abuse occurred encompasses an implicit finding of intent, imminent harm, and reasonable fear).
Bjergum v. Bjergum, 392 N.W.2d 604 (Minn. Ct. App. 1986) (present intent to do harm).
Blake v. Blake, No. C1-98-320 (Minn. Ct. App. Sept. 22, 1998) (UNPUBLISHED) (threats and harassment sufficient).
Boniek v. Boniek, 443 N.W.2d 196 (Minn. Ct. App. 1989) (infer intent to harm).
Budd-Garcia v. Kieffer, No. A11-2283 (Minn. Ct. App. Nov. 26, 2012) (UNPUBLISHED) (court's application of the definition of "domestic abuse" as it is written in the statute is not error.).

C

Champlin v. Champlin, Nos. C1-98-642/C6-98-653 (Minn. Ct. App. Sept. 15, 1998) (UNPUBLISHED) (physical abuse).
In re Cusick v. Cusick, No. A08-0557 (Minn. Ct. App. April 21, 2009) (UNPUBLISHED) (terroristic threats).

D

Danner v. Danner, No. A11-0335 (Minn. Ct. App. December 19, 2011) (UNPUBLISHED) (requesting an OFP two months after a domestic abuse incident occurred does not provide enough evidence there is a present intent to cause fear or imminent harm).
Dretsch v. Bergdahl, No. C0-00-844 (Minn. Ct. App. Oct. 10, 2000) (UNPUBLISHED) (need physical injury or intent to inflict fear of imminent injury).

E

Eddie v. Eddie, No. A03-2040 (Minn. Ct. App. July 6, 2004) (UNPUBLISHED) (yelling vulgarities insufficient to show intention to do present harm).
Edwards ex re. Edwards v. Edwards, No. A09-0196 (Minn. Ct. App. Aug. 18, 2009) (UNPUBLISHED) (harsh language and threats of discipline may constitute domestic abuse).
Elmasry v. Verdin, 726 N.W.2d 163 (Minn. Ct. App. 2007) (persons residing together meet definition of household member).

G

Gasper v. Gasper, No. A14-2133 (Minn. Ct. App. August 24, 2015) (UNPUBLISHED) (four family members' fear of imminent harm based on past and present abusive behavior meets the definition of domestic abuse)

H

Hall v. Arend, No. A15-2088 (Minn. Ct. App. November 7, 2016) (UNPUBLISHED) (OFP requires preponderance of evidence to extend to child who wasn't injured directly by appellant).
Hall v. Hall, 408 N.W.2d 626 (Minn. Ct. App. 1987) (context of relationship, no overt act needed).
Hatfield v. Anderson, No. C5-94-604 (Minn. Ct. App. Sept. 20, 1994) (UNPUBLISHED) (fear of imminent harm).
Henke v. Shulbe, No. A15-2011 (Minn. Ct. App. August 31, 2015) (UNPUBLISHED)(MN Supreme Court authorized domestic abuse advocates to attend OFP hearings and address court at judge's discretion)
Henry v. Henry, No. A05-798 (Minn. Ct. App. Jan. 10, 2006) (UNPUBLISHED) (definition of domestic abuse includes intent to cause, in the mind of a family member, fear of harm to another family member).
Hicks v. Hicks, No. A16-2043 (Minn. Ct. App. Oct. 23, 2017) (UNPUBLISHED) (Nonverbal threatening behavior is sufficient).
Hill v. Brockamp, No. C2-98-973 (Minn. Ct. App. Jan. 14, 1999) (UNPUBLISHED) (overt act not needed for subsequent OFP, context of past abuse).
In re Hudson, No. A13-0283 (Minn. Ct. App. Aug. 26, 2013) (UNPUBLISHED) (petitioner must demonstrate harm on the part of the responding party, not simply that domestic abuse occurred in the home).

K

Kahler v. Lange, No. A10-2009 (Minn. Ct. App. July 5, 2011) (UNPUBLISHED) (imminent fear may be caused by verbal abuse and need not be caused by physical aggression).
Karasek v. Karasek, No. A08-0643 (Minn. Ct. App. March 24, 2008) (UNPUBLISHED) (threatening confrontation satisfies requirement of "fear of imminent physical harm, bodily injury, or assault).
Kass v. Kass, 355 N.W.2d 335 (Minn. Ct. App. 1984) (present infliction of fear of harm).
Klammer v. Klammer, No. A15-0922 (Minn. Ct. App. January 25, 2016) (UNPUBLISHED) (OFP granted only to a victim of domestic abuse, not on behalf of a minor child without a finding of domestic abuse)
Kopylov v. Kopylov, A15-0079 (Minn. Ct. App. August 31, 2015) (UNPUBLISHED) (domestic abuse includes actual or fear of infliction of imminent physical harm, bodily injury, or assault)
Knuth v. Knuth, No. C1-92-482 (Minn. Ct. App. June 30, 1992) (UNPUBLISHED) (overt physical act not required, past abuse is factor).

M

Martin v. Freundl, No. A16-0387 (Minn. Ct. App. Dec. 5, 2016) (UNPUBLISHED) (Text messages to respondent mother were sufficient to grant the OFP to her, but not sufficient to prove intent to harm the children).
Martin v. Martin, No. C5-97-360 (Minn. Ct. App. Aug. 19, 1997) (UNPUBLISHED) (do not need physical act).
Miu v. Miu, No. CX-98-1384 (Minn. Ct. App. Jan. 26, 1999) (UNPUBLISHED) (physical abuse).

O

Olson v. Olson, No. A05-1417 (Minn. Ct. App. May 16, 2006) (UNPUBLISHED) (terroristic statements threatening life of wife constitute domestic abuse).
Omwando v. Nyaboga, No. A13-1327 (Minn. Ct. App. April 21, 2014) (UNPUBLISHED) (past history of abusive behavior can be included in the totality of the circumstances that the court uses to infer a present intent to commit domestic abuse).
O'Neil v. O'Neil, No. A13-0296 (Minn. Ct. App. Oct. 21, 2013) (UNPUBLISHED) (petitioner's fear reasonable because abuse was ongoing, delay in filing for OFP was due to her fear and filed shortly after dissolution proceedings commenced because petitioner expected to see appellant.).

P
Paul v. Wittman, No. A16-1148 (Minn. Ct. App. April 24, 2017) (UNPUBLISHED) (Sexual advances that exist without a fear of sexual assault or other imminent physical harm is not enough to grant an OFP).
Pechovnik v. Pechovnik, 765 N.W.2d 94 (Minn. Ct. App. 2009) (evidence sufficient for district court to infer appellant's present intent to inflict fear of imminent physical harm, bodily injury or assault based on the totality of the circumstances).
Pogorelec v. Tank, No. C8-98-2047 (Minn. Ct. App. May 18, 1999) (UNPUBLISHED) (physical contact is not physical injury).
Pulk v. Pulk, No. C0-95-729 (Minn. Ct. App. Nov. 21, 1995) (UNPUBLISHED) (threats without overt act may be sufficient).

R
Reynolds v. Pavlov, No. A11-1209 (Minn. Ct. App. April 2, 2012) (UNPUBLISHED) (physical violence not necessary to issue an OFP).

S
Schable v. Boyle, No. C4-99-1178 (Minn. Ct. App. Apr. 18, 2000) (UNPUBLISHED) (assaults and threats are basis for reasonable fear of physical harm).
Schlosser v. Feist, No. C1-96-1396 (Minn. Ct. App. Dec. 24, 1996) (UNPUBLISHED) (overt act need not be physical, past abuse is factor).
Schmidt, on behalf of P.M.S. v. Coons, 818 N.W.2d 523 (Minn. 2012) (an OFP may only be granted to a victim of domestic abuse.).
Schroeder v. Schroeder, No. A13-2053 (Minn. Ct. App. July 21, 2014) (UNPUBLISHED) (conduct inflicting fear of bodily harm constitutes domestic abuse).
Sperle v. Orth, 763 N.W.2d 670 (Minn. Ct. App. 2009) (former relationship may qualify as a significant romantic or sexual relationship).
Sullivan v. Sullivan, No. A12-0046 (Minn. Ct. App. October 1, 2012) (UNPUBLISHED) (a finding of present intent to inflict harm or fear of harm may be supported by the totality of the circumstances).

T
Thompson v. Schrimsher, No. A16-0378 (Minn. Ct. App. Jan. 9, 2017) (UNPUBLISHED) (Abuse of discretion issuing an OFP when there was no longer a showing of present intent to cause or inflict fear of imminent physical harm).

V
Vail v. Vail, No. A16-1812 (Minn. Ct. App. May 15, 2017) (UNPUBLISHED) (A single incident of domestic committed by the respondent against the mother does constitute present harm for the purposes of OFP petition).

Vos v. Drehen, No. C4-94-1789 (Minn. Ct. App. Mar. 7, 1995) (UNPUBLISHED) (authorized use of force).

W

Welsand v. Welsand, No. A08-0568 (Minn. Ct. App. Jan. 6, 2009) (UNPUBLISHED) ("grabbing a child and accidentally causing a mark on the child is not abuse.").
Wirth v. Wirth, No. A10-515 (Minn. Ct. App. Sept. 14, 2010) (UNPUBLISHED) (threat to kill is a threat to commit a crime of violence and therefore is sufficient support for the issuance of an OFP).
Wolf ex rel. J.R.F. v. Fairbanks, No. C1-01-1074 (Minn. Ct. App. Nov. 27, 2001) (UNPUBLISHED) (actual harm or present intent).
Woodin v. Rasmussen, 455 N.W.2d 535 (Minn. Ct. App. 1990) (family/household member).

REMOTENESS

Bjergum v. Bjergum, 392 N.W.2d 604 (Minn. Ct. App. 1986) (evidence of abuse two years prior failed to establish present intent to do harm).
Hall v. Hall, 408 N.W.2d 626 (Minn. Ct. App. 1987) (present verbal threats coupled with past physical abuse sufficient to uphold OFP).
Holm v. Holm, No. C5-00-1357 (Minn. Ct. App. Apr. 17, 2001) (UNPUBLISHED) (because there had been no abuse during six month period since husband returned from inpatient chemical dependency treatment, wife's petition for OFP was denied).
Randall v. Coleman, No. C3-93-851 (Minn. Ct. App. Jan. 4, 1994) (UNPUBLISHED) (abuse three and four months old is sufficient to support OFP).
Reitan v. Reitan, No. C1-98-1242 (Minn. Ct. App. Jan. 19, 1999) (UNPUBLISHED) (abuse occurring nine months earlier is not too remote for OFP, particularly when subsequent events also support the order).
Schable v. Boyle, No. C4-99-1178 (Minn. Ct. App. Apr. 18, 2000) (UNPUBLISHED) (record replete with instances of verbal, physical threats supports issuance of OFP).
Schanze v. Schanze, A15-0231 (Minn. Ct. App. December 14, 2015) (UNPUBLISHED) (threats made repeatedly throughout a marriage are sufficient to support OFP)
Slupitskaya ex rel. A.G.S. v. Hagglund, No. A08-0889 (Minn. Ct. App. Sep. 8, 2009) (UNPUBLISHED) (instances of sexual abuse more than one year prior not too remote in time to constitute present danger to do harm).
Sroh v. Eam, No. A05-2 (Minn. Ct. App. Sept. 6, 2005) (UNPUBLISHED) (incidents occurring two months prior are not too remote).
Welch v. Fuller, No. A03-796 (Minn. Ct. App. Apr. 27, 2004) (UNPUBLISHED) (abusive acts occurring within one month of the hearing sufficient to support OFP).

RELIEF

Ekblad v. Ekblad, No. C2-96-838 (Minn. Ct. App. Nov. 5, 1996) (UNPUBLISHED) (travel restrictions).
Fitzgerald v. Fitzgerald, 406 N.W.2d 52 (Minn. Ct. App. 1987) (court-fashioned relief).
Flom v. Peltier, No. C1-99-1610 (Minn. Ct. App. Mar. 28, 2000) (UNPUBLISHED) (counseling).
Readio v. Readio, No. C4-02-1015 (Minn. Ct. App. May 13, 2003) (UNPUBLISHED) (restitution).

Rigwald v. Rigwald, 423 N.W.2d 701 (Minn. Ct. App. 1988) (property and financial issues resolved in divorce).
Selcuk v. Selcuk, No. A03-763 (Minn. Ct. App. May 4, 2004) (UNPUBLISHED) (court may order anger management assessment and chemical dependency evaluation).
Swenson v. Swenson, 490 N.W.2d 668 (Minn. Ct. App. 1992) (petitioner cannot be excluded from home).
Zavoral v. Wilson, No. A08-1876 (Minn. Ct. App. June 2, 2009) (UNPUBLISHED) (district court exceeded authority by granting grandmother temporary custody).

GAL APPOINTMENT

Hassebroek v. Hassebroek, No. C6-99-1862 (Minn. Ct. App. May 23, 2000) (UNPUBLISHED) (without reason to believe children were victims of abuse or neglect, GAL is not necessary).
JEP v. JCP, 432 N.W.2d 483 (Minn. Ct. App. 1988) (where sexual abuse of children was alleged, trial court's failure to appoint GAL constituted grounds for reversal and rehearing).
Johnsen v. Johnsen, No. C1-01-362 (Minn. Ct. App. Oct. 30, 2001) (UNPUBLISHED) (because other professionals investigated claim of sexual abuse, failure to appoint GAL is not grounds for reversal).
Tung v. Oshima, Nos. C9-92-2352/C1-93-55 (Minn. Ct. App. July 6, 1993) (UNPUBLISHED) (because there was reason to believe sexual abuse occurred, trial court erred in failing to appoint GAL).
Vasquez v. Moore, No. C6-93-391 (Minn. Ct. App. July 20, 1993) (UNPUBLISHED) (trial court's findings of fact deemed insufficient; GAL to be appointed on remand).

ATTORNEY REPRESENTATION/FEES

Bourke v. Voss, No. A07-1812 (Minn. Ct. App. Sept. 23, 2008) (UNPUBLISHED) (in order to refuse to grant attorney fees, the district court must determine that one of the two exceptions of Minn. R. Civ. P. 37.04 applies: (1) the failure to attend the deposition was justified, or (2) some other circumstance made the award of expenses and fees unjust).
Buckley-Wallace v. Kresien, No. C5-96-252 (Minn. Ct. App. July 9, 1996) (UNPUBLISHED) (pro se litigants held to same standard as attorney).
Johnson v. Johnson, 726 N.W.2d 516 (Minn. Ct. App. 2007) (recovery of attorney fees for unsubstantiated allegations).
Steeves v. Campbell, 508 N.W.2d 817 (Minn. Ct. App. 1993) (pro se litigants held to same standard as attorney).
Whalen ex rel. Whalen v. Whalen, 594 N.W.2d 277 (Minn. Ct. App. 1999) (divorce attorney not required to provide OFP representation).

APPEAL ISSUES

Kepler v. Kepler, No. C5-94-1557 (Minn. Ct. App. Feb. 21, 1995) (UNPUBLISHED) (premature notice of filing does not limit time for appeal).
Steeves v. Campbell, 508 N.W.2d 817 (Minn. Ct. App. 1993) (motions for amendments do not extend appeal time).
Sweep v. Sweep, 358 N.W.2d 451 (Minn. Ct. App. 1984) (OFP with temporary custody order is appealable).
Weigel v. Miller, 574 N.W.2d 759 (Minn. Ct. App. 1998) (prevailing party cannot appeal).

CRIMINAL PROCEEDINGS

(This is not a complete listing of all criminal cases involving OFPs.)

State v. Andrasko, 454 N.W.2d 648 (Minn. Ct. App. 1990), *review denied* (Minn. 1990) (conviction under voidable order stands).
State v. Asfeld, 662 N.W.2d 534 (Minn. 2003) (prior acts of domestic abuse are admissible).
State v. Dumas, No. CX-93-1608 (Minn. Ct. App. Mar. 8, 1994) (UNPUBLISHED) (cannot challenge OFP issuance in criminal proceeding).
State v. Evenson, 554 N.W.2d 409 (Minn. Ct. App. 1996) (burglary).
State v. Hebert, No. C3-91-1882 (Minn. Ct. App. June 6, 1992) (UNPUBLISHED) (OFP testimony cannot be used in criminal proceedings).
State v. Redalen, No. C9-94-945 (Minn. Ct. App. Dec. 27, 1994) (UNPUBLISHED) (state-of-mind notice, not formal notice, in order to enforce).
State v. Riley, No. C6-98-1169 (Minn. Ct. App. Apr. 13, 1999) (UNPUBLISHED) (evidence of OFP petition can be excluded in criminal proceeding if prejudicial).
State v. Sieff, No. A03-1656 (Minn. Ct. App. Oct. 12, 2004) (UNPUBLISHED) (OFP violation is not a strict liability offense; knowledge is an essential element).

DURATION

Beach v. Beach, No. A04-834 (Minn. Ct. App. Jan. 11, 2005) (UNPUBLISHED) (Domestic Abuse Act does not require duration findings).
Braend v. Braend, 721 N.W.2d 924 (Minn. Ct. App. 2006) (specific duration-related findings not required).
Reynolds v. Pavlov, No. A11-1209 (Minn. Ct. App. April 2, 2012) (UNPUBLISHED) (where an OFP is issued for more than two years there must have been a violation of a prior OFP).
Shaw v. Sikora, No. A10-117 (Minn. Ct. App. Nov. 2, 2010) (UNPUBLISHED) (district court must make findings as to why fifty-year OFP extension is more appropriate than twenty-five-year extension).

CUSTODY/CHILDREN

A
Aljubailah v. James, 903 N.W. 2d 638 (Minn. Ct. App. Oct. 23, 2017) (Custody findings are not required when issuing temporary custody and parenting time in an OFP).
Arendt v. Dailey, No. C5-02-1752 (Minn. Ct. App. Apr. 29, 2003) (UNPUBLISHED) (presumption against joint legal custody when findings of domestic abuse).

B
Baker v. Baker, 494 N.W.2d 282 (Minn. 1992) (best interest findings not required).
Beardsley v. Garcia, 753 N.W.2d 735 (Minn. 2008) (district court has authority to award temporary parenting time to an ROP father).

C
Cardinal v. Cardinal, No. A06-1307 (Minn. Ct. App. June 5, 2007) (UNPUBLISHED) (best interest findings not required in domestic abuse cases).

G
Gada v. Dedefo, 684 N.W.2d 512 (Minn. Ct. App. 2004), *superseded by statute*, Minn. Stat. § 518B.01 subd. 6(a)(4) (2005) (best interest findings required when custody is contested).

H
Henke v. Shulbe, No. A15-2011 (Minn. Ct. App. August 31, 2015) (UNPUBLISHED) (court has authority to grant supervised parenting exchanges in relation to OFP)

J
Johnson v. Humfield, No. C9-98-2073 (Minn. Ct. App. May 18 1999) (UNPUBLISHED) (custody to non-adjudicated dad; presumption of parentage sufficient; best interest findings necessary).
Jones-Albert v. Albert, No. A04-395 (Minn. Ct. App. Nov. 9, 2004) (UNPUBLISHED) (simultaneous pending dissolution does not preclude OFP from addressing custody).

K
Kimmel v. Kimmel, 392 N.W.2d 904 (Minn. Ct. App. 1986) (best interest findings).

M
Mokalla v. Mokalla, No. A15-1287 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED) (district court may address temporary custody and parenting time in OFP, but is not required to do so)
Mosser ex rel. Behnke v. Behnke, No. A05-1166 (Minn. Ct. App. May 23, 2006) (UNPUBLISHED) (pulling children from public school and mother's refusal to treat her mental illness resulted in best-interest findings in favor of father).

O
Olson v. Olson, No. C7-02-344 (Minn. Ct. App. Sept. 10, 2002) (UNPUBLISHED) (custody under the UCCJEA).
Olson v. Olson, No. A05-1417 (Minn. Ct. App. May 16, 2006) (UNPUBLISHED) (custody determinations can be modified after dissolution proceedings).
In re the Matter of: Colleen Jea'ne Olson v. Olson, No. A17-1176 (Minn. Ct. App. May 21, 2018) (UNPUBLISHED) (GAL's recommendation sufficient basis of the court's decision).

P
Pavel v. Pavel, No. A15-1937 (Minn. Ct. App. August 8, 2016) (UNPUBLISHED) (Previous custody agreement by couple was satisfactory basis upon which to base the terms of the OFP).

R
Rigwald v. Rigwald, 423 N.W.2d 701 (Minn. Ct. App. 1988) (custody relief temporary until divorce or best interest findings).

S
Schanze v. Schanze, A15-0231 (Minn. Ct. App. December 14, 2015) (UNPUBLISHED) (Court rejected appellant's argument that the district court failed to make findings on the best interest of the child because appellant cited an old version of the statute; the current statute does not mandate best interest factors)
Schmid v. Brooks-Schmid, No. C9-99-1080 (Minn. Ct. App. Feb. 1, 2000) (UNPUBLISHED) (remoteness of abuse).

Schroeder v. Schroeder, No. A13-2053 (Minn. Ct. App. July 21, 2014) (UNPUBLISHED) (a finding of abuse is required before the court can order supervised parenting time).
Slupitskaya ex rel. A.G.S. v. Hagglund, No. A08-0889 (Minn. Ct. App. Sep. 8, 2009) (UNPUBLISHED) (district court abused its discretion when extending OFP to require supervised visitation of minor child that witnessed abuse of elder child because respondent failed to show any direct harm or intent on the part of appellant to cause fear of harm in the minor).
Svendsen v. Strange, No. A07-166 (Minn. Ct. App. Feb. 28, 2008) (UNPUBLISHED) (a finding of abuse against a non-child victim justifies a parenting-time restriction against the abuser).

T
In re T.I.-C., No. C9-92-2156 (Minn. Ct. App. Mar. 2, 1993) (UNPUBLISHED), *superseded by statute*, Minn. Stat. § 518B.01, subd. 6(a)(4) (2005) (best interest findings necessary if custody contested).

Z
Zavoral v. Wilson, No. A08-1876 (Minn. Ct. App. June 2, 2009) (UNPUBLISHED) (district court exceeded its authority by granting grandmother temporary custody in the original OFP and by placing constraints on the mother's custody in the second amended OFP without providing another evidentiary hearing).

HARASSMENT RESTRAINING ORDER CASES

CONSTITUTIONALITY

A
Asgian v. Schnorr, No. C1-96-622 (Minn. Ct. App. Oct. 1, 1996) (UNPUBLISHED) (an HRO is a constitutional time, place, and manner restriction when it prohibits all communication with the victim, serves purposes unrelated to the content of the communication, and leaves upon other channels of communication, other than the victim).

H
Higbee v. Graham, No. C7-97-1588 (Minn. Ct. App. Dec. 30, 1997) (UNPUBLISHED) (an HRO is a constitutional restriction on First Amendment rights when it is content neutral, prohibiting all contact regardless of content).
Holland v. Yang, No. A09-2321 (Minn. Ct. App. Aug. 10, 2010) (UNPUBLISHED) (civil proceedings do not create the right to counsel).

I
ISD#381 v. Olson, No. C9-00-888 (Minn. Ct. App. Jan. 15, 2001) (UNPUBLISHED) (no jury trial right).

L
Larson v. Ethier, No. C0-95-1573 (Minn. Ct. App. Apr. 2, 1996) (UNPUBLISHED) (an HRO is a content-neutral time, place, and manner restriction of First Amendment rights when it prohibits all contact with a specific individual, protects that individual's privacy, and leaves other means of communication open).

N

Naumann v. Zimmer, No. C7-97-1414 (Minn. Ct. App. Feb. 3, 1998) (UNPUBLISHED) (an expansion of restricted area in an HRO is not overly burdensome of free speech where respondent's history includes 10 years of harassing the same victims).
Nygard v. Walsh, No. A15-1276 & A15-1277 (Minn. Ct. App. February 16, 2016) (UNPUBLISHED) (HRO statute does not require hearing on matters determined to have no merit)

P
Polinksy v. Bolton, No. A16-1544 (Minn. Ct. App. May 22, 2017) (UNPUBLISHED) (Use of the "@mentions" feature on Twitter, and anonymous blog posting with contact information about respondent are sufficient evidence of harassment, and was not unconstitutionally vague nor infringing on his First Amendment rights).

R
River Towers Ass'n v. McCarthy, 482 N.W.2d 800 (Minn. Ct. App. 1992) (an HRO is constitutional when it restricts *manner* of speech, as opposed to *content*).
Royal Oaks Holding Company v. Ready, No. C4-02-267 (Minn. Ct. App. Oct. 7, 2002) (UNPUBLISHED) (first amendment protected speech; unlawful prior restraints).

S
Sauer v. Scheibe, No. A10-428 (Minn. Ct. App. Oct. 12, 2010) (UNPUBLISHED) (right of counsel right not required at an HRO hearing).
Schwartz v. Meyer, No. C5-00-1231 (Minn. Ct. App. Mar. 20, 2001) (UNPUBLISHED) (targeted residential picketing and First Amendment rights).

T
Treptow v. Vacko, No. A15-1084 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (collateral estoppels and res judicata do not apply when issue is not identical and earlier claim did not involve the same set of factual circumstances)

W
Welsh v. Johnson, 508 N.W.2d 212 (Minn. Ct. App. 1993) (an HRO prohibiting all communications to an unwilling listener but allowing the speaker alternative means of expressing certain views is a constitutional time, place, and manner restriction of First Amendment rights).
Westbrooke Condominium Association d/b/a Meadow Creek Condominiums, et al. v. Pittel, No. A14-0198 (Minn. Ct. App. January 12, 2015) (UNPUBLISHED) (district court's order did not infringe on appellant's First Amendment rights by preventing him from using any websites to harass respondents).

PROCEDURAL ISSUES

Jurisdiction
State v. McDaniels, Nos. A04-1901 and A05-401 (Minn. Ct. App. Jan. 3, 2006) (UNPUBLISHED) (Minnesota courts have subject matter jurisdiction over a harassment complaint when the harassing conduct occurred within Minnesota; The Violence Against Women Act requires states to enforce protective orders as if they were issued within their own state).

Standing
Benigni v. Tammaro, No. A03-1198 (Minn. Ct. App. July 20, 2004) (UNPUBLISHED) (no claim for malicious prosecution or abuse of process without a showing of fraud on the court).
State v. Nodes, 538 N.W.2d 158 (Minn. Ct. App. 1995) (HRO obtained by guardian of adult ward enforceable).
Steps of Success Homes, L.L.C. v. Dowell, No. A09-587 (Minn. Ct. App. Dec. 29, 2009) (UNPUBLISHED) (standing statute does not authorize anyone other than a victim of harassment or their guardian to file a petition for an HRO).

Review
Foss v. Vaughn, No. A07-1691 (Minn. Ct. App. Sept. 16, 2008) (UNPUBLISHED) (record shows no basis for the district court to *sua sponte* disqualify the judge for bias).

Notice
Foss v. Vaughn, No. A07-1691 (Minn. Ct. App. Sept. 16, 2008) (UNPUBLISHED) (proper notice received by mail).
Igo v. Chernin, 540 N.W.2d 913 (Minn. Ct. App. 1995) (once respondent files notice of deposing a petitioner before an HRO hearing, defense of inadequate service is waived).
Johnson v. Koski, No. A15-0610 (Minn. Ct. App. Dec. 14, 2015) (UNPUBLISHED)(respondent who was not served ex parte HRO until 70 days after issuance can still request evidentiary hearing, even though the 45-day time period has run, by fulfilling the factors that allow a district court to open a default judgment)
York v. Wood, No. C3-96-508 (Minn. Ct. App. Aug. 13, 1996) (UNPUBLISHED) (receiving a letter sufficient notice of an HRO).

Hearing/Findings of Fact

A
Anderson v. Lake, 536 N.W.2d 909 (Minn. Ct. App. 1995) (apply OFP case law to HRO context; hearing includes examining and cross-examining witnesses while under oath).

B
Becker v. Becker, No. C8-93-263 (Minn. Ct. App. July 27, 1993) (UNPUBLISHED) (specific findings are required to issue an HRO).

D
Darling v. Koeneman, No. A10-2140 (Minn. Ct. App. August 22, 2011) (UNPUBLISHED) ("intent to cause harm" element will be inferred where harasser's behavior is found to be objectively unreasonable).
Deitering v. Mulligan, No. A09-1904 (Minn. Ct. App. Aug. 31, 2010) (UNPUBLISHED) (being a GAL does not authorize contact with child where appellant was never appointed the child's GAL).
In the Matter of: Krista Ann Dickenson and o/b/o Minor Children, No. A17-0224 (Minn. Ct. App. Oct. 23, 2017) (UNPUBLISHED) (No error in denying a continuance after Respondent provided vague and contradictory medical statements to support his excuse for missing his evidentiary hearing).

F

Freihammer v. Powers, No. A09-1562 (Minn. Ct. App. June 15, 2010) (UNPUBLISHED) (a party's actions need not be obscene or vulgar to constitute harassing conduct).

H

Harvieux v. Doering, No. C2-02-1918/CX-02-2105 (Minn. Ct. App. June 17, 2003) (UNPUBLISHED) (right to present witnesses).
Hatfield v. Anderson, No. C7-02-733 (Minn. Ct. App. Apr. 1, 2003) (UNPUBLISHED) (right to full hearing).
Heikkila v. Dietman, No. A15-2022 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED) (excluded testimony entitles appellant to new hearing only if he can demonstrate that the exclusion was prejudicial error, and an evidentiary error is prejudicial only if the error might reasonably have changed the results)
Holland v. Yang, No. A09-2321 (Minn. Ct. App. Aug. 10, 2010) (UNPUBLISHED) (TRO may be issued without evidentiary hearing).
Holth v. Haugen, No. C9-00-1104 (Minn. Ct. App. Feb. 27, 2001) (UNPUBLISHED) (right to hearing for extension/modification).

I

Inskeep v. Moore, No. A15-0450 (Minn. Ct. App. March 28, 2016) (UNPUBLISHED) (court of appeals will defer to district court determination of credibility has authority to determine credibility, transcripts cannot be clarified on appeal if appellants did not move to correct before the district court)

J

Johnson v. Arlotta, No. A11-0630 (Minn. Ct. App. December 12, 2011) (UNPUBLISHED) (whether words constitute harassment is not determinative on whether they are true or false).
Johnson v. Arlotta, No. A11-0630 (Minn. Ct. App. December 12, 2011) (UNPUBLISHED) (indirect contact with individual is a violation of HRO).
Johnson v. Koski, No. A15-0610 (Minn. Ct. App. Dec. 14, 2015) (UNPUBLISHED)(district court did not abuse discretion in dismissing HRO, district court found Koski credible and Johnson produced no evidence to contradict his testimony)
Johnson v. Michels Property Groups, LLC, No. A09-2315 (Minn. Ct. App. Sept. 14, 2010) (UNPUBLISHED) (definition of harassment in HRO statute may not be read in conjunction with criminal statute's definition).

K

Khan v. Ansar, No. A08-0477 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED) (district court abused its discretion by modifying custody without an evidentiary hearing).
Krebs v. Faus, No. A09-1799 (Minn. Ct. App. Aug. 10, 2010) (UNPUBLISHED) (district court may base issuance of HRO on events that occurred during existence of prior HRO).
Krupicka v. Hassinger, No. A15-1231 (Minn. Ct. App. April 4, 2016) (UNPUBLISHED) (district court does not abuse discretion by refusing to hold an evidentiary hearing on a motion to vacate or modify HRO when affidavit is speculative and vague)

L

Latham v. Latham, No. A11-1085 (Minn. Ct. App. March 5, 2012) (UNPUBLISHED) (particularized findings).

LeBlanc v. Lee, No. A15-1006 (Minn. Ct. App. March 7, 2016) (UNPUBLISHED) (erroneous finding of fact that does not make a difference in the outcome of a case found to be harmless error)

M

Martinez v. Takuanki, No. A09-155 (Minn. Ct. App. Dec. 1, 2009) (UNPUBLISHED) (proof of intent to harass not required for court to issue an HRO).

N

Naumann v. Zimmer, No. C7-97-1414 (Minn. Ct. App. Feb. 3, 1998) (UNPUBLISHED) (the law of the case doctrine does not bar HRO amendments on issues that were not originally litigated; amending the terms of an HRO while leaving time-frame as originally stipulated does not require a separate hearing prior to amendment).

O

Olson v. LaBrie, No. A11-0558 (Minn. Ct. App. February 13, 2012) (UNPUBLISHED) (tort privacy principles may not be used when attempting to satisfy the privacy element under the HRO statute).

R

Residences at the Jewel v. Tiedeman, No. C5-03-45 (Minn. Ct. App. Aug. 5, 2003) (UNPUBLISHED) (use of a standard HRO form indicating specific grounds for granting an HRO is sufficient for making specific findings under HRO statute).
Robbennolt v. Weigum, No. A15-1440 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (materials not filed or considered by the district court when HRO was issued will not be reviewed on appeal)
Rokusek v. Brown, A13-1092 (Minn. Ct. App. Dec. 20, 2013) (UNPUBLISHED) (a hearing includes the right to present and cross-examine witnesses, to produce documents and to have the case decided pursuant to the findings required under the statute).

S

Schact v. Lucas, Nos. A09-0008, A09-0009 (Minn. Ct. App. Aug. 18, 2009) (UNPUBLISHED) (district court did not abuse discretion in failing to find harassment).
Scheffler v. McDonough, No. A16-0949 (Minn. Ct. App. May 1, 2017) (UNPUBLISHED) (District court has discretion in issuing HROs).
Secklin v. Skelton, No. A04-1743 (Minn. Ct. App. Aug. 9, 2005) (UNPUBLISHED) (case vacated and remanded because district court failed to swear in witnesses).

T

Treptow v. Vacko, No. A15-1084 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (must prove "objectively unreasonable conduct" or intent to harass)

V

Vacko v. Treptow, No. A15-1745 (Minn. Ct. App. July 5, 2016) (UNPUBLISHED) (Collateral estoppel and res judicata do not apply if the allegations contain a new set of factual circumstances).

W

Watson v. Johnson, No. A16-1040 (Minn. Ct. App. March 20, 2017) (UNPUBLISHED) (Lack of findings does not require reversal when the record supported the district court's ruling).
Weidner v. Hurt, No. A07-2001 (Minn. Ct. App. Sept. 30, 2008) (UNPUBLISHED) (ex-husband's wife may functionally serve as her son's guardian ad litem even if not formally appointed and may

request a hearing because the court's ex parte order in the matter negatively impacted her parenting time with her son. Appellate courts must defer to district court credibility determinations).

Z

Zwirn v. Jones, No. C8-00-1854 (Minn. Ct. App. Apr. 10, 2001) (UNPUBLISHED) (right to present testimony and evidence).

Mutual HRO

Borukhova v. Borukhova, No. C2-95-1882 (Minn. Ct. App. Feb. 27, 1996) (UNPUBLISHED) (when there is no express assent to a mutual restraining order in the findings, a mutual restraining order is not enforceable).

EVIDENTIARY ISSUES

B

Barrett v. Barrett, No. A12-0032 (Minn. Ct. App. July 16, 2012) (UNPUBLISHED) (facts must be provided to support allegations that an HRO should be issued).
Berg v. Flaherty, No. A15-1743 (Minn. Ct. App. June 13, 2016) (UNPUBLISHED) (emails sent to community members with content that had a substantial adverse effect on Berg's privacy, in addition to threatening behavior at joint child's school concert, meets statutory definition of harassment)
Brown v. Brown, No. A10-2086 (Minn. Ct. App. Jun. 13, 2011) (UNPUBLISHED) (evidentiary issues).
Brunner v. Harper, No. A17-0146 (Minn. Ct. App. Sept. 11, 2017) (UNPUBLISHED) **(**Witness lists are not required).

D

Dillon v. Burton, No. A12-1369 (Minn. Ct. App. May 6, 2013) (UNPUBLISHED) (hearing requirement for an HRO includes the right to examine and cross-examine witnesses and to produce documents).
Dwyer v. Molde, No. A15-0534 (Minn. Ct. App. Dec. 7, 2015) (UNPUBLISHED)(district court may take judicial notice of parties' prior litigation, and use affidavit and motion as evidence, district court may issue HRO based on two or more prior HROs in effect, or multiple HRO violations, party's voluntary absence from properly noticed HRO hearing results in default)

E

Emery v. Bryand, A13-1146 (Minn. Ct. App. Dec. 30, 2013) (UNPUBLISHED) (statute governing TROs does not require a finding that immediate and present danger actually exists. HRO does not require a finding or an allegation of an immediate and present danger of harassment).
Engelmann v. Christos, No. A14-2163 (Minn. Ct. App. Oct. 26, 2015) (UNPUBLISHED)(testimony about repeated texting, calls to respondent's wife, and picketing outside place of employment)

F

Faricy v. Schramm, No. C8-02-689 (Minn. Ct. App. Nov. 12, 2002) (UNPUBLISHED) (sending a single letter constitutes a single act, insufficient to support an HRO under the HRO statute because it requires repeated incidents of intrusive or unwanted acts).
Fenske v. Fenske, No. C4-99-2007 (Minn. Ct. App. May 16, 1999) (UNPUBLISHED) (evidentiary issues).

Franz v. Lyons, No. A09-1171 (Minn. Ct. App. Feb. 23, 2010) (UNPUBLISHED) (district court did not abuse discretion in finding removal of signs not objectively unreasonable or intentional).

G

Gornovskaya v. Ponkin, No. A14-0147 (Minn. Ct. App. November, 24, 2014) (UNPUBLISHED) ("intent to cause harm" element will be inferred where harasser's behavior is found to be objectively unreasonable).
Grams v. Sarasti, No. C7-01-91 (Minn. Ct. App. June 26, 2001) (UNPUBLISHED) (credibility is trial court issue).

H

Hanson v. Browning, Nos. C1-03-236 and C3-03-237 (Minn. Ct. App. Sept. 3, 2003) (UNPUBLISHED) (specific intent to harass is not a necessary element of establishing harassment under the HRO statute).
Heard v. Stewart, No. A09-1723 (Minn. Ct. App. Sept. 18, 2007) (UNPUBLISHED) (when petitioners fail to provide probative evidence and the testimony conflicts, deference is given to the trial court's credibility determinations).
Heikkila v. Dietman, No. A15-2022 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED) (court may issue HRO if it finds that there are reasonable grounds to believe actor engaged in harassment)
Hanson v. Burridge, No. A16-2069 (Minn. Ct. App. Aug. 7, 2017) (UNPUBLISHED) **(**A showing that a respondent intended intimate contact to occur is required to establish sexual assault).
Helget v. Meier, No. A13-0495 (Minn. Ct. App. Oct. 15, 2013) (UNPUBLISHED) (harassment statute does not state that a petitioner must allege an immediate and present danger of harassment to obtain an HRO).
Higbee v. Graham, No. C7-97-1588 (Minn. Ct. App. Dec. 30, 1997) (UNPUBLISHED) (evidentiary issues).

J

Jackson v. Love, Nos. A10-1954; A10-1955; A10-1956; A10-1957 (Minn. Ct. App. August 1, 2011) (UNPUBLISHED) (evidentiary issues).
Jensen v. Walsh, No. C9-96-2361 (Minn. Ct. App. June 17, 1997) (UNPUBLISHED), *superceded by statute* Minn. Stat. § 609.478 (1)(a)(1) (1998) (specific intent to harass is a necessary element of a harassment claim).
Johnson ex rel. Johnson v. Cobb, No. C8-92-1323 (Minn. Ct. App. Mar. 9, 1993) (UNPUBLISHED) (testimony of vulnerable adult expressing desire to stop socializing with former friends sufficient to support an HRO).
Johnson v. Luppino, No. A05-1557 (Minn. Ct. App. May 30, 2006) (UNPUBLISHED) (testimony used to establish certain statements were made, but not to establish the truth of those statements, is not hearsay).
Juberian v. Hail, No. A16-2061 (Minn. Ct. App. Sept. 5, 2017) (UNPUBLISHED) **(**Insufficient evidence on the record and one harassing gesture do not cause a substantial adverse effect on an individual).

K

Khan v. Ansar, No. A08-0477 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED) (district court abused its discretion by modifying custody without an evidentiary hearing. An order that modifies custody should be based on a hearing in which witnesses are cross-examined).
Knute v. Vanoverbeke, No. C6-02-786 (Minn. Ct. App. Dec. 17, 2002) (UNPUBLISHED) (sufficiency of evidence; breadth of restrictions; best evidence rule).
Krupicka v. Hassinger, No. A15-1231 (Minn. Ct. App. April 4, 2016) (UNPUBLISHED) (petitioner not bound by non-mutual HRO)

L
Larson v. Ethier, No. C0-95-1573 (Minn. Ct. App. Apr. 2, 1996) (UNPUBLISHED) (stalking, threatening to damage personal property, and sending mail is sufficient to support an HRO).
LeBlanc v. Lee, No. A15-1006 (Minn. Ct. App. March 7, 2016) (UNPUBLISHED) (district court has discretion to rule that prior violations are too far remote or convoluted, feelings of love can be relevant regarding intention to have a substantial adverse effect)

M
Martinez ex rel. Minor Child v. Layland, No. A09-403 (Minn. Ct. App. Jan. 5, 2010) (UNPUBLISHED) (credibility assessments left to discretion of district court).
Meeks-Hull v. Mashak, No. A09-2337 (Minn. Ct. App. Apr. 9, 2011) (UNPUBLISHED) (lack of credible evidence).

N
Nygard v. Walsh, No. A15-1276 & A15-1277 (Minn. Ct. App. February 16, 2016) (UNPUBLISHED) (statements construed as inappropriate or argumentative do not meet the statutory definition of harassment; allegations years from three years prior too far removed to support further inquiry)

P
Pappas v. Koepp, Nos. C3-96-1805 and C3-96-1806 (Minn. Ct. App. July 1, 1997) (UNPUBLISHED) (HRO petition fails where there is no proof of intent to harass).
Pikula v. Wynn, No. A17-1045 (Minn. Ct. App. December 26, 2017) (UNPUBLISHED) (Appellant's due process rights were not violated when a judge assisted a pro se party to lay foundation).
Price v. Miller, No. C0-99-836 (Minn. Ct. App. Aug. 24, 1999) (UNPUBLISHED) (the referee's findings are given deference, credibility is properly assessed by the referee and the conclusions of the court will not be overturned unless clearly erroneous).

R
Rader v. Miho, No. C3-98-1937 (Minn. Ct. App. July 6, 1999) (UNPUBLISHED) (hearsay evidence).
Robbennolt v. Weigum, No. A15-1440 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (appellant who did not appear for evidentiary hearing cannot dispute findings of fact based on respondent's allegations, without citing any evidentiary record that establishes errors in the findings; repeated calls to authorities constitute "repeated incidents of intrusive or unwanted acts" that had a substantial adverse effect on the respondent's privacy)
Roer v. Dunham, 682 N.W.2d 179 (Minn. Ct. App. 2004) (repeated incidents needed to establish harassment).

S

Shannon v. Anderson, No. C8-95-1305 (Minn. Ct. App. Feb. 27, 1996) (UNPUBLISHED) (disruptive and threatening behavior is sufficient to find intent to adversely affect the safety, security, or privacy of another within the meaning of the HRO statute).
Starnes v. LoPesio, No. C4-94-1548 (Minn. Ct. App. Jan. 17, 1995) (UNPUBLISHED) (landlord's hostile treatment of tenants sufficient for tenants to obtain an HRO against the landlord).

T
Treptow v. Vacko, No. A15-1084 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (Providing false information, submitting a false document, and falsely testifying under oath to get an HRO that results in the respondent being arrested and spending two days in jail is conduct that adversely affected respondent)

V
VanCamp v. Vancamp, A14-1926 (Minn. Ct. App. June 1, 2015) (UNPUBLISHED) (HRO can be issued due to conduct that has a substantial adverse effect on one's safety, security or privacy or causes an objectively reasonable belief of such an adverse effect).

HARASSMENT DEFINED

A
Adler v. Adler, No. A17-0502 (Minn. Ct. App. October 30, 2017) (UNPUBLISHED) (Five harassing text messages sufficient).
Anderson vs. Weber, No. A17-0202 (Minn. Ct. App. Nov. 13, 2017) (UNPUBLISHED) (Targeted signs and retaliatory actions are sufficient).
Asgian v. Schnorr, No. C1-96-622 (Minn. Ct. App. Oct. 1, 1996) (UNPUBLISHED) (threatening letters constitute harassment under the HRO statute).

B
Banken v. Banken, Nos. A11-2156, A12-0771 (Minn. Ct. App. February 11, 2013) (UNPUBLISHED) (deceptive statements repeatedly posted online with the intent to create malice towards another are sufficient reason to issue an HRO).
Bazzaro v. Issaenko, No. A12-2017 (Minn. Ct. App. June 17, 2013) (UNPUBLISHED) (a HRO may be granted based on a finding of repeated incidents or unwanted acts that cause recipient to become fearful).
Beach v. Jeschke, 649 N.W.2d 502 (Minn. Ct. App. 2002) (a two-sentence statement made on one occasion does not constitute harassment).
Beahrs v. Lake, No. C3-97-2222 (Minn. Ct. App. May 26, 1998) (UNPUBLISHED) (sending accurate copies of public records to friends, family, and business acquaintances does not constitute harassment).
Beier v. Sheets, No. C4-02-2035 (Minn. Ct. App. May 6, 2003) (UNPUBLISHED) (name-calling and drink-throwing, though not overwhelming evidence of harassment, are sufficient to uphold HRO).
Boggs v. Boggs, No. A14-1744 (Minn. Ct. App. May 4, 2015) (UNPUBLISHED) (appellant's instruction to his employee to stalk respondent, monitor her social life, track her vehicle, and threaten her constituted harassment).
Braun ex rel. T.A.B. v. Fink, No. A05-958 (Minn. Ct. App. Mar. 14, 2006) (UNPUBLISHED) (single incident of sexual assault constitutes harassment, while single intrusion or unwanted act does not).

Bruggeman v. Walz, No. A08-172 (Minn. Ct. App. Dec. 9, 2008) (UNPUBLISHED) (threatening acts may constitute harassment).

C

Carlson v. Petersen, No. A12-0893 (Minn. Ct. App. February 25, 2013) (UNPUBLISHED) (although an assault which occurs during a physical fight provides enough factual support for the single-incident statutory ground for issuing an HRO, there is a repeated-incidents requirement for issuing one on behalf of children).
Carter-Wyman v. Wyman, No. A04-1042 (Minn. Ct. App. Apr. 19, 2005) (UNPUBLISHED) (intent is irrelevant if conduct has a substantial adverse effect on safety, security, or privacy).
Chase v. Graham, No. C1-98-1158 (Minn. Ct. App. Nov. 10, 1998) (UNPUBLISHED) ("person" defined).

D

Davidson v. Webb, 535 N.W.2d 822 (Minn. Ct. App. 1995), *superseded by* Minn. Stat. § 609.748, subd. 1(a)(1) (2000) (holding a single incident, constituted of multiple acts or words, sufficient to find harassment as defined under the HRO statute).
Dayton Hudson Corp. v. Johnson, 528 N.W.2d 260 (Minn. Ct. App. 1995) (a corporation fit the statutory definition of a party entitled to a restraining order against a shoplifter under the anti-harassment statute because the legislature generally defined "person" to include corporations).
Deitering v. Mulligan, No. A09-1904 (Minn. Ct. App. Aug. 31, 2010) (UNPUBLISHED) (repeated telephone calls and visits to child's school meet definition of harassment).
Dunham v. Roer, 708 N.W.2d 552 (Minn. Ct. App. 2006) (five specific acts of harassment in two months support HRO).

E

El Bazi v. Nolan, No. C8-98-962 (Minn. Ct. App. Nov. 24, 1998) (UNPUBLISHED) (trial court abused its discretion in relying on single, speculative finding to issue HRO).
Engelmann v. Christos, No. A14-2163 (Minn. Ct. App. Oct. 26, 2015) (UNPUBLISHED) (repeated texts after respondent asked her not to contact him, calls to respondent's wife, and picketing at respondent's place of employment constitutes harassment)
Erickson v. Sorgert, No. C4-00-1818 (Minn. Ct. App. Apr. 3, 2001) (UNPUBLISHED) (unwanted contact with victim and her mother constitutes harassment).

F

Fenske v. Fenske, No. C4-99-2007 (Minn. Ct. App. May 16, 1999) (UNPUBLISHED) (unwanted visits and telephone calls constitute harassment).
Foss v. Vaughn, No. A07-1691 (Minn. Ct. App. Sept. 16, 2008) (UNPUBLISHED) (threatening, taking video footage and attempting to photograph the victim constitutes harassment).
Francis v. Lawson, No. A05-1709 (Minn. Ct. App. July 25, 2006) (UNPUBLISHED) (incidents that relate to separate individuals do not amount to repeated incidents of harassment).

G

Gilliard v. Leatherman No. A16-0132 (Minn. Ct. App. October 3, 2016) (UNPUBLISHED) (False allegations to child services, online harassment, and threats sufficient evidence to issue an HRO).
Gregor v. Gregor, No. A16-0146 (Minn. Ct. App. August 20, 2016) (UNPUBLISHED) (invasion of privacy incidents which may not be technically illegal can constitute harassment sufficient to issue an HRO).

H

Hamlin v. Barrett, No. C1-98-1774 (Minn. Ct. App. June 29, 1999) (UNPUBLISHED) (conduct consisting of more than one act and causing apprehension in another constitutes harassment).
Hatfield v. Anderson, No. C7-02-733 (Minn. Ct. App. Apr. 1, 2003) (UNPUBLISHED) (following ex-wife in her car for several miles and leaving a note on her car constitute harassment).
Herbst v. Herbst, No. A05-945 (Minn. Ct. App. Feb. 7, 2006) (UNPUBLISHED) (letters to employer constitute harassment).
Hilligan v. Schulte, No. C9-99-477 (Minn. Ct. App. Aug. 31, 1999) (UNPUBLISHED) ("person" defined).

I

ISD #381 v. Olson, No. C9-00-888 (Minn. Ct. App. Jan. 15, 2001) (UNPUBLISHED) (yelling at school principal, sending her threatening letter constitute harassment).

J

Janecek v. Rosenthal, No. A16-1885 (Minn. Ct. App. June 12, 2017) (UNPUBLISHED) (Videotaping a home could amount to objectively unreasonable conduct).
Jankovsky v. Anderson, et al., No. A12-0590 (Minn. Ct. App. Dec. 10, 2012) (UNPUBLISHED) (a HRO can be issued due to conduct that has a substantial adverse effect on one's safety, security or privacy or causes an objectively reasonable belief of such an adverse effect).
Jones v. Wilson, No. C4-01-2218 (Minn. Ct. App. June 25, 2002) (UNPUBLISHED) (stalking respondent and his children constitutes harassment).
Johnson v. Berg, No. A07-1749 (Minn. Ct. App. Aug. 26, 2008) (UNPUBLISHED) (daughter advocated for her mother's care in a harassing manner).
Johnson v. Luppino, No. A05-1557 (Minn. Ct. App. May 30, 2006) (UNPUBLISHED) (multiple contacts with petitioner's employer to provide misinformation constitutes harassment).
Johnson v. Weibel, No. A14-1663 (Minn. Ct. App. June 8, 2015) (UNPUBLISHED) (appellant nearly driving his car into respondent constituted one of the many intrusive or unwanted acts within the definition of harassment).

K

Keenan v. Oslund, No. C7-00-1358 (Minn. Ct. App. Feb. 20, 2001) (UNPUBLISHED) (stalking home and repeated phone calls constitute harassment).
Khan v. Ansar, No. A08-0477 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED) (father cutting himself with a knife in front of the mother and child and making threats against the mother and her family through email constitute harassment).
Koening, et. al., v. Koening, No. A12-2282 (Minn. Ct. App. Sept. 3, 2013) (UNPUBLISHED) (videotaping conduct on co-owned commercial property not unreasonable, did not have substantial adverse effect on safety, security or privacy, nor was there an objective reasonable belief of adverse effect).
Krebs v. Faus, No. A09-1799 (Minn. Ct. App. Aug. 10, 2010) (UNPUBLISHED) (definition of harassment).
Kreuz v. Pernat, No. C1-00-1839 (Minn. Ct. App. Apr. 24, 2001) (UNPUBLISHED) (single instance of loud words and swearing do not constitute harassment).
Kush v. Mathison, 683 N.W.2d 841 (Minn. Ct. App. 2004) (repeated incidents and substantial adverse effects on safety, security, and privacy constitute harassment, even if he/she "can handle it").

L

Lang v. Dunlap, No. C1-03-60 (Minn. Ct. App. Sept. 16, 2003) (UNPUBLISHED) (conduct must have a substantial adverse effect on the safety, security, or privacy of the petitioner to find harassment under the HRO statute).
Larson v. Carrillo, No. A03-1337 (Minn. Ct. App. May 11, 2004) (UNPUBLISHED) (letters repeatedly sent to home and workplace constitute harassment).
LeBlanc v. Lee, No. A15-1006 (Minn. Ct. App. March 7, 2016) (UNPUBLISHED) (if no evidence of physically assaultive conduct, petitioner must show 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)
Lee-Barrios v. Vacko, No. A16-2084 (Minn. Ct. App. October 30, 2017) (UNPUBLISHED) (Harassing Facebook messages and attempted hacking of Facebook accounts were sufficient).
Lowhorn v. Harstad, No. A05-1471 (Minn. Ct. App. May 30, 2006) (UNPUBLISHED) (attempts to pick fights with neighbors and continuously tormenting them constitute harassment).
Luoma v. Hamm, No. C0-97-1240 (Minn. Ct. App. Dec. 23, 1997) (UNPUBLISHED) (numerous letters with charged language constitute harassment).

M

Meeks-Hull v. Mashak, No. A09-2337 (Minn. Ct. App. Apr. 9, 2011) (UNPUBLISHED) (definition of harassment not met).
Meyer v. Harley, No. A16-1304 (Minn. Ct. App. Jan. 23, 2017) (UNPUBLISHED) (Years old history of harassment was not sufficient evidence to prove basis for an HRO currently).
Miller v. Fredin, No. A16-0631 (Minn. Ct. App. Jan. 23, 2017) (UNPUBLISHED) (Persistent unwanted contact via a litany of social media is sufficient evidence of harassment).
Murray v. Schaffer, No. A17-2024 (Minn. Ct. App. June 11, 2018) (UNPUBLISHED) (single instance of harassment was not sufficient).

O

Olsen v. Gregor, No. A17-0245 (Minn. Ct. App. Oct. 2, 2017) (UNPUBLISHED) (Sufficient instances of harassment).

P

Paye v. Kiatamba, No. A17-0793 (Minn. Ct. App. February 5, 2018) (UNPUBLISHED) (Contacting Respondent, directly and indirectly, three separate times on the same day is sufficient). *Peterson v. Johnson*, 755 N.W.2d 758 (Minn. Ct. App. 2008) (ex-husband did not physically assault during an altercation when he did not touch ex-wife's boyfriend, and his observation and telephone call to police reporting that ex-wife's boyfriend did not have a child safety restraint in his car was reasonable and does not amount to harassment).

R

Rabideau v. Rabideau, No. A11-2321 (Minn. Ct. App. October 1, 2012) (UNPUBLISHED) (repeated, unwanted acts support the issuance of an HRO).
Residences at the Jewel v. Tiedeman, No. C5-03-45 (Minn. Ct. App. Aug. 5, 2003) (UNPUBLISHED) (two specific incidents of harassment is sufficient to issue an HRO under the statute; "stay away" language is not overly broad).
Robbennolt v. Weigum, No. A15-1440 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (statutory definition of harassment explicitly applies "regardless of the relationship between the actor and the intended target")

Royal Oaks Holding Company v. Ready, No. C4-02-267 (Minn. Ct. App. Oct. 7, 2002) (UNPUBLISHED) (trial court's conclusory statements regarding unwanted conduct insufficient to establish statutory definition of harassment).

S

Safstrom v. Morin, No. A15-1879 (Minn. Ct. App. September 19, 2016) (UNPUBLISHED) (Repeated yelling taking place on another's property and in front of minor children were sufficient to prove harassment).
Schwartz v. Meyer, No. C5-00-1231 (Minn. Ct. App. Mar. 20, 2001) (UNPUBLISHED) (targeted residential picketing).
Schultz v. Ryan, No. A04-590 (Minn. Ct. App. Jan. 18, 2005) (UNPUBLISHED) (context of relationship and aggregation of incidents demonstrate harassment).
Shannon v. Ramoo, No. C8-97-1292 (Minn. Ct. App. Feb. 10, 1998) (UNPUBLISHED) (repeated touching, shouting, intrusive behavior constitute harassment).
Sharper Management, LLC v. Pittel, No. A16-0251 (Minn. Ct. App. August 20, 2016) (UNPUBLISHED) (While the harassment claimed violated the existing HRO, it did not implicate appellants' safety, security, or privacy).
Sobolev v. Warner, No.C3-01-1822 (Minn. Ct. App. Apr. 16, 2002) (UNPUBLISHED) (efforts to prevent drunk friend from driving do not constitute harassment).
Stokes-Ciochetto & Ciochetto v. Eskeli, No. A16-1211 (Minn. Ct. App. Jan. 17, 2017) (UNPUBLISHED) (Single instance of trespass is not sufficient to prove harassment occurred).

T

Tarlan v. Sorensen, No. C2-98-1900 (Minn. Ct. App. Apr. 27, 1999) (UNPUBLISHED) (insufficient evidence to support a finding of harassment).
Thompson v. Olson, No. A04-1477 (Minn. Ct. App. June 21, 2005) (UNPUBLISHED) (telephone calls at home and work constitute harassment).
Tibbetts v. Erichsen, No. A04-829 (Minn. Ct. App. Feb. 8, 2005) (UNPUBLISHED) (intent is irrelevant if conduct has a substantial adverse effect on safety, security, or privacy).

V

Ventura v. Davis, No. A03-1448 (Minn. Ct. App. June 22, 2004) (UNPUBLISHED) (acts that have a substantial adverse effect on another constitute harassment).

W

In re the Matter of Witchell, 606 N.W.2d 730 (Minn. Ct. App. 2000) (argumentative written statements do not constitute harassment).
Wyman v. Albrecht, No. C5-00-869 (Minn. Ct. App. Feb. 6, 2001) (UNPUBLISHED) (attorney actions are considered ordinary and harmless, not harassment).

Y

York v. Wood, No. C3-96-508 (Minn. Ct. App. Aug. 13, 1996) (repeated, daily disruptions constitute harassment under the HRO statute).
Yule v. Kehlenbeck, No. A17-0211 (Minn. Ct. App. September 5, 2017) (UNPUBLISHED) (Several text messages through different channels is a sufficient basis of harassment for an HRO).

RELIEF

State v. Barberg, No. A04-2058 (Minn. Ct. App. Dec. 6, 2005) (UNPUBLISHED) ("stay away" language vague when in reference to the address of a rental home on a 70-acre farm not part of the rental agreement on which the landlord-respondent works).
Cain v. Bratrud, No. CX-01-828 (Minn. Ct. App. Nov. 6, 2001) (UNPUBLISHED) (conversion of OFP to HRO if parties agree).
In the matter of: Natasha June Marie Courtney v. McReynolds, No. A17-0759 (Minn. Ct. App. February 26, 2018) (UNPUBLISHED) (Error in extending the restricted area because it did not consider countervailing interests).

Davies v. Mehralian, No. A14-0599 (Minn. Ct. App. February 2, 2015) (UNPUBLISHED) (scope of HRO prohibiting ex-husband from being within one mile of ex-wife's home did not raise any constitutional issue).
Heikkila v. Dietman, No. A15-2022 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED) (minor children who are not victims of harassment cannot be included in an HRO)
Khan v. Ansar, No. A08-0477 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED) (a father's harassment of his child's mother provides a sufficient basis for the district court to restrict his parenting time because of its effect on the child).
Sovick v. Rud, No. C1-94-1619 (Minn. Ct. App. Feb. 21, 1995) (UNPUBLISHED) (convert OFP to HRO).
Traiforos v. Mahoney, No. C3-92-340 (Minn. Ct. App. July 14, 1992) (UNPUBLISHED) (convert OFP to HRO).
Williams v. Rimmer, No. A14-1431 (Minn. Ct. App. May 26, 2015) (UNPUBLISHED) (HRO excluding appellant from area surrounding respondent's residence is consistent with an order prohibiting a harassing party from having contact with the petitioner. However, the exclusion zone cannot be around a confidential address).

DURATION

Bovi v. Parask, No. C5-98-1616 (Minn. Ct. App. May 11, 1999) (UNPUBLISHED) (length of order).
Dwyer v. Molde, No. A15-0534 (Minn. Ct. App. Dec. 7, 2015) (UNPUBLISHED)(without notice to opposing party, extension cannot be granted for longer than what was originally petitioned for)
Fischer v. Rechtzigel, No. A13-1661 (Minn. Ct. App. August 25, 2014) (UNPUBLISHED) (district court abused its discretion when it extended the HRO pending further court order).
Roer v. Dunham, 682 N.W.2d 179 (Minn. Ct. App. 2004) (no extension for HRO).
Berg v. Flaherty, No. A15-1743 (Minn. Ct. App. June 13, 2016) (UNPUBLISHED) (Criminal cases resolved via Alford pleas with stays of adjudication provides sufficient evidence for HRO court to establish prior violations necessary to issue HRO for more than two years.)

ATTORNEY REPRESENTATION/FEES

Agnew v. Campbell, No. C3-90-1130 (Minn. Ct. App. Dec. 4, 1990) (UNPUBLISHED) (judicial immunity; attorney fees for frivolous actions).
Grantz v. Domeier, No. C5-02-83 (Minn. Ct. App. Oct. 15, 2002) (UNPUBLISHED) (collateral estoppel; attorney fees as sanction for using court system to harass).

APPEAL ISSUES

Crapser v. Smith, No. A17-1238 (Minn. Ct. App. April 9, 2018) (UNPUBLISHED) (A Respondent who agrees to an HRO cannot appeal the HRO).

Fiduciary Foundation, LLC ex rel. Rothfusz v. Brown, 834 N.W.2d 756 (Minn. Ct. App. 2013) (when no hearing is held an *ex parte* THRO issued under Minn. Stat. § 609.748, subd. 4, THRO becomes an *ex parte* HRO under subd. 5. Order denying motion to vacate the *ex parte* HRO is appealable, because it is a final order affecting substantial rights).
Heikkila v. Dietman, No. A15-2022 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED) (*ex parte* temporary HRO was not a final order affecting appellant's substantial rights and was therefore not appealable)
Schewe v. Doyle, No. C4-02-799 (Minn. Ct. App. May 6, 2003) (UNPUBLISHED) (contempt; breadth of restrictions).
Treptow v. Johnson, No. A05-272 (Minn. Ct. App. Oct. 4, 2005) (UNPUBLISHED) (when no authority is cited, prejudicial error must be obvious on mere inspection).
Treptow v. Vacko, No. A15-1084 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED) (if Court of Appeals does not need to rely on or consider appellate addendum, motion to strike portions moot)

CRIMINAL PROCEEDINGS

(This is not a complete listing of all criminal cases involving OFPs.)

State v. Barberg, No. A04-2058 (Minn. Ct. App. Dec. 6, 2005) (UNPUBLISHED) ("stay away" language vague when in reference to the address of a rental home on a 70-acre farm not part of the rental agreement on which the landlord-respondent works).
Berg v. Flaherty, No. A15-1743 (Minn. Ct. App. June 13, 2016) (UNPUBLISHED) (Alford pleas must be supported by strong factual basis, with defendant's agreement that the state's evidence is sufficient to convict. Therefore, because Alford plea is sufficient to support criminal conviction to HRO violation, it is also sufficient for the district court to establish prior HRO violations. Conviction is unnecessary; stay of adjudication is sufficient to provide evidence of prior violation.)
State v. Egge, 611 N.W.2d 573 (Minn. Ct. App. 2000) (initiating contact through a third party is sufficient to support an HRO violation).
State v. Harrington, 504 N.W.2d 500 (Minn. Ct. App. 1993) (picketing on the street in front of a specific residence violates an HRO that prohibits picketing in front of that specific residence).
State v. Hedtke, No. A03-590 (Minn. Ct. App. Apr. 13, 2004) (UNPUBLISHED) (harassing mail sent to a victim's family and friends constitutes harassment under the HRO statute because the mailings were intended to reach the victim indirectly).
State v. Hoffman, No. C3-02-809 (Minn. Ct. App. Sept. 10, 2002) (UNPUBLISHED) (an incident of harassment separate and distinct from a series of other incidents demonstrating a pattern of harassing conduct is sufficient for establishing a separate HRO violation).
State v. McDaniels, Nos. A04-1901 and A05-401 (Minn. Ct. App. Jan. 3, 2006) (UNPUBLISHED) (continuous contact by phone and e-mail constitutes a single behavioral incident for the purposes of sentencing).
State v. Nodes, 538 N.W.2d 158 (Minn. Ct. App. 1995) (HRO obtained by guardian of adult ward enforceable).
State v. Persons, 528 N.W.2d 278 (Minn. Ct. App. 1995) (authority to file a complaint alleging an HRO violation depends upon the jurisdiction in which the violation occurred).
State v. Schocker, No. C7-96-432 (Minn. Ct. App. Oct. 1, 1996) (UNPUBLISHED) (evidence was sufficient to sustain conviction for HRO violation even though a copy of the restraining order was not entered into evidence because defendant read into the record a paragraph of the HRO and admitted at trial that he was aware of its existence).

CASE SUMMARIES

(listed alphabetically)

ORDERS FOR PROTECTION

A

Adams v. Adams, No. C7-95-1652 (Minn. Ct. App. Jan. 23, 1996) (UNPUBLISHED).
Chisago County, Judge Slattengren

A threat to remove the children to another state may be grounds for granting an OFP. Mother was given sole custody after a divorce. Although a Texas court ordered the children remain in Texas, the mother moved to Minnesota and the father sent the children by plane to join her, both parties apparently having intended to disregard the provision of the Texas order. Almost a year later, the father threatened to take the children and return to Texas. The mother filed for an OFP, submitting a lengthy affidavit recounting incidents of domestic abuse occurring between 1980 until she left Texas in 1993. She also stated she feared the father would take the children, doubted he would return them, and feared for their safety if they were with him. The district court did not abuse its discretion by granting the OFP because of the father's threat to remove the children and the imminent nature of that threat. The father's claim of lack of personal jurisdiction was waived when not raised at the trial level.

***A.D.U. v. Kallevig*,** No. A09-1555 (Minn. Ct. App. June 15, 2010) (UNPUBLISHED).
Kandiyohi County, no judge reported

The appellate court affirmed the district court's conclusion that appellant engaged in "domestic assault" as defined in the Domestic Abuse Act, rejecting appellant's argument that his actions constituted mere harassment rather than domestic abuse. Appellant intentionally rammed his truck into respondent's unattended car, followed respondent's car so closely in his truck that she was fearful of being rear-ended, and shook and pounded on respondent's car while respondent was inside. In response to appellant's argument he was not a family or household member because he and respondent never lived together or had children together, the appellate court affirmed the district court's finding that based on the totality of the circumstances, a significant romantic or sexual relationship existed between appellant and respondent, and therefore appellant was subject to the Act.

Ahmed v. Hassan, No. A11-980 (Minn. Ct. App. Feb. 13, 2012) (UNPUBLISHED).
Hennepin County, no judge reported

In order for the district court to properly issue an OFP it must make a finding there is "present intent to inflict fear of imminent physical harm, bodily injury, or assault." The court of appeals found there was an implied finding by the district court of appellant intending to inflict fear of imminent physical harm on respondent. Appellant argued the alleged incidents of abuse in 2008 and 2009 would be too remote for the issuance of an OFP originally filed in December 2010. However, respondent testified, and the district court found it credible, the 2008 and 2009 events were connected to the continued threats at the time she made her filing in 2010. The court of appeals stated further verbal threats were enough to issue an OFP against an individual.

***Aljubailah v. James*,** 903 N.W. 2d 638 (Minn. Ct. App. Oct. 23, 2017)
Hennepin County, no judge reported

The court is not required to make custody findings when issuing temporary custody and parenting time in an OFP. Mother had filed an OFP when bruises were found on her son's legs, and there was evidence that the child's father used a belt against the child on multiple occasions. The court ruled upon finding that the mother's testimony was more credible and found that granting temporary custody and parenting in conjunction with granting the OFP was not an abuse of the district court's discretion. The appellate court affirmed the district court holding that in ordering a temporary custody/ parenting time in an OFP, the court was not required to make statutory findings on the best interest factors listed in Minn. Stat. 518.17.

Andrasko v. Andrasko, 443 N.W.2d 228 (Minn. Ct. App. 1989).
Itasca County, Judge Robert S. Graff

All orders and decrees in family court proceedings must contain particularized findings of fact. Wife petitioned for an OFP, alleging her husband hit her and abused their son. Husband was served one day prior to the hearing. His request for a continuance to obtain an attorney was denied. No testimony was taken regarding the abuse. There were no findings of fact, conclusions of law, or memoranda. The district court issued the OFP to the wife for one year. The husband appealed and the appellate court reversed the OFP. Although the wife alleged incidents of past abuse in her petition, she did not allege any intent to do present harm. The district court did not ask either the appellant or respondent about the alleged domestic abuse. In addition, the Domestic Abuse Act requires a five-day notice prior to an OFP hearing, and there was no indication that a short continuance would have resulted in undue delay. The trial court erred by failing to make findings concerning domestic abuse, although the wife was not prevented from filing for another OFP.

State v. Andrasko, 454 N.W.2d 648 (Minn. Ct. App. 1990).
Itasca County, Judge William J. Spooner

An OFP that is later reversed on appeal is not void. Therefore, failing to dismiss a conviction for an OFP violation before reversal is not an error. The husband got into an altercation with the wife's boyfriend, kicking down the door of the apartment while an OFP was in effect. Four months after the violation, the appellate court reversed the OFP, but the husband was convicted of violating the order. A void judgment arises when the court lacks jurisdiction so that its exercise of power is illegitimate. Because the court had the power to issue an OFP, it is voidable, but not void. Furthermore, the lower court properly denied a self-defense argument because the violation occurred when the husband kicked in the door, making subsequent self-defense actions irrelevant.

Arendt v. Dailey, No. C5-02-1752 (Minn. Ct. App. Apr. 29, 2003) (UNPUBLISHED).
Ramsey County, Judge Huspeni

In general, if at least one party to a custody dispute seeks joint legal custody, there is a rebuttable presumption that joint legal custody is in the child's best interests. However, if the court makes a finding of domestic abuse between the parties, there is a rebuttable presumption that joint legal custody is not in the child's best interest. After making a finding of domestic abuse against the father, the trial court granted sole legal custody to the mother of the parties' two minor children. Father appealed, arguing that the record does not support the finding of domestic abuse, therefore

the court improperly applied the rebuttable presumption that joint legal custody is not in the children's best interests. The appellate court affirmed the decision, finding that the record did support the finding of domestic abuse and the trial court did not abuse its discretion.

Arnold v. Arnold, No. A14-1097 (Minn. Ct. App. April 27, 2015) (UNPUBLISHED).
Anoka County

It was not an abuse of discretion for the district court to grant an OFP because husband's acts qualified as abusive conduct under the Domestic Abuse Act. Husband put the tips of his fingers, in the shape of a gun, to wife's temples while yelling, and cursing, threw a glass vase at wife, and interfered with wife's attempt to call 911. Based on the totality of the circumstances, there was a showing of present harm or an intention on the part of husband to do present harm. Husband argued that wife's communication with him while the divorce petition was filed and their child in common was born suggest her fear was unreasonable. However, the district court found wife's testimony regarding the incidents was credible and collaborated by texts she sent to her mother. The Court of Appeals rejected husband's argument that the four months between the incident and wife's petition was too significant.

State v. Asfeld, 662 N.W.2d 534 (Minn. 2003).
Stearns County, Judge Paul H. Anderson

Defendant argued that "family or household" member for purposes of the element of first degree child abuse murder meant that others he had abused were members of his victim's family, not his own. The court held that, for purposes of this element, "family or household" member means the defendant's family. Evidence of defendant's prior acts of abuse against his parents and siblings was deemed admissible to show a pattern of past domestic abuse.

Ayala v. Ayala, 749 N.W.2d 817 (Minn. Ct. App. May 28, 2008).
Ramsey County, Judge Judith M. Tilsen

Service of an order for protection by publication under Minn. Stat. § 518B.01, subd. 5(f) is ineffective where there has not been at attempt at personal service by law enforcement personnel that has failed because of deliberate concealment and a copy of the petition and notice of hearing has not been mailed to the respondent's known residence. The court held that Minn. Stat. § 518B.01 subd. 5(f) only allowed service by publication where concealment was done with the object of avoiding service. The court reasoned that Carlos's refusal to disclose his address did not satisfy the concealment requirement since it was unrelated to the OFP proceedings.

B

Baker v. Baker, 494 N.W.2d 282 (Minn. 1992).
Blue Earth County, Judge James D. Mason

Notification of the ex parte proceeding is not required at an ex parte OFP hearing because of the unique nature of the remedy and extraordinary circumstances surrounding its need. The father's due process rights are not violated without notification because the Act contains safeguards against error and the government has an extraordinary interest in protecting vulnerable persons. The trial court does not have to make a finding of immediate danger of physical harm to the child before a

temporary custody determination can be made at an OFP hearing. Best interest findings are not required when making a custody determination under the Domestic Abuse Act, because doing so would essentially negate the Act's safety of the victim and child standard.

The Baker *court interpreted the 1990 version of subdivision 6(a) of Minn. Statute § 518B.01. The legislature altered the language of this provision in 1992, requiring a determination of the best interests of the child in cases in which custody is contested.* See e.g. In re Welfare of T.I.-C., *C9-92-2156 (Minn. Ct. App. Mar. 2, 1993) (when custody is contested, OFP must include findings on best interests of the child);* Gada v. Dedefo, *684 N.W. 2d 512 (Minn. Ct. App. 2004) (where temporary custody is contested, court must consider best interests of the child).*

In 2005, however, the legislature again amended subdivision 6(a) of § 518B.01. The section now states that a "court may provide relief as follows: . . . (4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. *In addition to the primary safety considerations, the court* may *consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. . . ." (emphasis added). Thus, the best interest findings mandated by the holdings of* Gada *and* T.I.-C. *are no longer required.*

In re Ball v. Prow, No. A08-528 (Minn. Ct. App. March 3, 2009) (UNPUBLISHED).
Dakota County, no judge reported

A mother's hearsay testimony regarding statements made by her four-year-old son accusing the son's father of improper contact was admissible under the residual hearsay exception in a proceeding brought by the mother seeking an OFP. The child's statements to his mother that his father had touched his "butt," had made him "eat poop," and had "peed" on him were admissible because they were spontaneous, he did not have motive to fabricate, he used terms commonly used by a four-year-old, and he consistently stated his allegations. However, the district court erred by denying Prow's motion to reopen the hearing based on newly discovered evidence: a report of MCRC's examination and interview of the child, and a letter from the Dakota County Social Services Department. Because the new evidence is (1) relevant and admissible at trial, (2) likely to have an effect on the result of a new trial, and (3) not merely collateral, impeaching, or cumulative, the hearing must be reopened, reversed and remanded.

Ball vs. Rogers, No. A16-0670 (Minn. Ct. App. Dec. 19, 2016) (UNPUBLISHED).
Wadena County

Appellant Rogers and Respondent Ball were married for three years until 2012, and they have a child together. The marriage ended when Rogers broke down a door to get to Ball, and threatened her with violence. In 2016, Ball petitioned for an OFP against Rogers after he picked up their child from school without telling Ball, in order to incite fear in Ball. In her testimony, Ball described their marriage as abusive verbally, mentally, and sexually, and that Rogers had once killed a dog in front of her and the child. Rogers appealed, claiming that the domestic abuse findings were stale and had no finding of present harm or threat of harm. The Court of Appeals placed the incident of picking up the child from school in the context of the abuse that occurred during the marriage. Although picking his child up from school unexpectedly was not in violation of any law, the Court of Appeals recognized that this was intended to inflict fear in Ball, based on his history of abusive behavior. Affirmed.

Barry v Iverson, No. C8-90-801 (Minn. Ct. App. Aug. 21, 1990) (UNPUBLISHED).

Ramsey County, Judge Mary Louise Klas

Orders for protection are for a fixed period not to exceed one year, "except when the court determines a longer fixed period is appropriate." The petitioner in this case produced evidence to support an extension of the OFP, including a previous assault by the respondent, disruption of phone service, receipt of hang-up phone calls, stolen mail and stopped newspapers. Although the evidence supported the petitioner's fear of the respondent, the district court made no findings on the appropriateness of a two-year extension. The appellate court thus modified the duration of the order to one year.

Barona v. Barona-Ayala, No. A07-1616 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED).
Dakota County, no judge reported

The district court did not abuse its discretion by granting an OFP because the husband's conduct towards his wife inflicted fear of imminent bodily harm and therefore constituted domestic abuse. Evidence that the husband "got in [his wife's] face," called her names, forced her into a bedroom, locked the door, threatened to take her daughter away from her, and slapped her suffices to show that the husband committed domestic abuse under chapter 518B.01 of the Minnesota Domestic Abuse Act.

***In re the Matter of: Ayano Eto Baylor for self and o/b/o Minor v. Baylor*,** No. A18-0077 (Minn. Ct. App. May 14, 2018) (UNPUBLISHED)
Hennepin County, no judge reported

Respondent and her minor daughter were granted an OFP against Appellant. Appellant argues on appeal that there was insufficient evidence to show abuse occurred or that he intended to do harm to his wife or his minor daughter. However, the Court found that Respondent's testimony that Appellant had kicked Respondent in the back while she was holding their minor child, and that Appellant had repeatedly struck the child with a spatula was sufficient in the court's finding of domestic abuse. Second, Appellant argued that the district court incorrectly excluded a video depicting Respondent striking him on the arm as irrelevant. However, the Court held that the video was months after the alleged domestic abuse, and would not make it any more or less probable that he had committed the domestic abuse alleged.

Beach v. Beach, No. A04-834 (Minn. Ct. App. Jan. 11, 2005) (UNPUBLISHED).
Itasca County, no judge reported

Respondent Susan Beach and her children were granted a two-year OFP against appellant Eric Beach. Appellant argued that the record did not support granting an OFP, and that the duration of the OFP should have been limited to one year. The appellate court found that appellant failed to show that the district court clearly erred in inferring that he intended to inflict a fear of harm on respondent. The district court granted an OFP because there was evidence appellant made numerous threats to kill respondent, appellant has a seventh degree black belt, has access to guns (because he is a police officer), has beaten her son (from a prior relationship) to the point where bones might have been broken, and entered her home late at night uninvited.

Domestic abuse can be found to exist when one family member intends to cause, in the mind of a second family member, fear of harm to a third family member. For this reason, an absence of intent to cause the children to fear him is not necessarily fatal to an OFP for the children if appellant

intended to cause respondent to fear for the children's safety. Here, because much of appellant's conduct was self-evidently directed at intimidating respondent and controlling the children, the Court of Appeals affirmed the OFP for the children.

Appellant conceded that Minn. Stat. § 518B.01, subd. 6(b) does not explicitly require findings explaining why an OFP will be effective for more than one year, but argued that findings justifying a duration exceeding one year are required under Minn. R. Civ. P. 52.01. While the Act explicitly requires findings on certain questions, it does not explicitly require duration-related findings. Because a requirement of duration-related findings is conspicuously absent from the Act, the appellate court declined to impose that requirement.

Though the Barry *opinion, C8-90-801 (Minn. Ct. App. Aug. 21, 1990) (unpublished), is not cited by the* Beach *court, the* Beach *court's interpretation of § 518B.01, subd. 6(b) implicitly overrules that of the* Barry *court. In contrast to the* Barry *court's determination that findings regarding the appropriateness of extending the duration of an OFP beyond one year are crucial, the* Beach *court held that the language in subd. 6(b) does not require explicit findings.*

Beardsley v. Garcia, 753 N.W.2d 735 (Minn. 2008).
Hennepin County, Judge Dickstein

The unambiguous language of Minn. Stat. § 518B.01, subd. 6(a)(4), authorizes a district court issuing an OFP to award temporary parenting time to an unadjudicated father whose paternity was acknowledged in an ROP. The district court was authorized to grant temporary parenting time to the father under section 518B.01, subd. 6(a)(4), which states that a court may "establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children." Subject to exceptions not implicated in this case, an ROP "has the force and effect of a judgment or order determining the existence of the parent and child relationship." Minn. Stat. § 257.75, subd. 3 (2006).

In ***Beardsley v. Garcia,*** *731 N.W.2d 843 (Minn. Ct. App. May 22, 2007), the court noted that Beardsley was aware when she petitioned for the OFP that she needed to be prepared to testify and bring with her any relevant evidence to the hearing. She did testify to her safety concerns for the child, and was not prevented from presenting any other evidence. The court held that because Beardsley had both notice and an opportunity to be heard, and because she failed to show how additional procedures were necessary to protect her interests, her due-process claim failed.*

Bell v. Marvin, No. C6-02-366 (Minn. Ct. App. Nov. 5, 2002) (UNPUBLISHED).
Roseau County, Judge Randall

A court's determination of whether there is a present intention to inflict harm or fear of harm may be based on past physical abuse or threats. Appellant Marvin challenged the issuance of an OFP against him, arguing that the record does not show that he had present intention to inflict harm or fear of harm on Bell. During an evidentiary hearing, the parties and several witnesses testified about numerous violent incidents by Marvin against Bell, including hitting, kicking, rape, and sodomy. Given the severity and repetitiveness of these events, it was not an abuse of discretion for the trial court to find that Marvin posed a continuing threat of harm to Bell.

Benson v. Benson, No. C3-95-515 (Minn. Ct. App. Aug. 29, 1995) (UNPUBLISHED).
Hennepin County, Judge Catherine Anderson

The Domestic Abuse Act does not require that the acts of abuse occur in Minnesota. Husband and wife had a divorce proceeding pending in Hennepin County. Intending to establish permanent residence in Florida upon finalization of the dissolution, the wife moved to the couple's home in Fort Myers. After an incident of abuse in Florida, the wife sought an OFP in Minnesota. According to the wife, the husband trapped her in the Florida home, went to a neighbor's home mistakenly thinking the wife had sought refuge there, then caught wife back at the house where he wrestled her, threw her around and choked her. Finding there was no evidence of domestic abuse, the district court denied the OFP. The appellate court found first that an application for relief under the Domestic Abuse Act may be filed in the court having jurisdiction over dissolution actions in the county of residence of either party, in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or in the county in which the alleged domestic abuse occurred. The court found next, however, that the district court, based on the appellate standard of review, did not abuse its discretion in failing to issue an OFP.

Bernhagen v. Bernhagen, No. A07-1791 (Minn. Ct. App. Sept. 2, 2008) (UNPUBLISHED).
Hennepin County, no judge reported

The district court's findings were sufficient to support its decision to grant an OFP because the court's finding that wife proved that domestic abuse occurred encompasses an implicit finding of intent, imminent harm, and reasonable fear. The totality of the circumstances, including the husband's size, tone of voice, proximity to wife during the confrontation at issue, his admission that he could "see the fear on [wife's] face" and knew that he had inflicted pain and suffering on her, and wife's testimony that she was afraid, are sufficient evidence from which to infer husband's intent to cause wife fear of harm. The record also supports an implicit finding that the wife was in fear of imminent harm. Finally, the district court's findings that wife was credible and that wife proved that domestic abuse occurred encompass an implicit finding that her fear is objectively reasonable.

Betts v. Floyd, No. CX-91-2155 (Minn. Ct. App. Mar. 24, 1992) (UNPUBLISHED).
Ramsey County, no judge reported

The appellate court may reverse an OFP if one of the parties is not given a chance to respond to the allegations. The referee found that Floyd had abused Betts, but the findings were minimally sufficient to meet the statutory definitions of domestic abuse because no dates or specific instances were listed. After two days of hearing Betts' case, the court was scheduled to hear Floyd. However, the referee stated that the judge ordered that no further testimony be allowed because of the amount of time already spent. Floyd never had an opportunity to complete his direct examination. The sudden and arbitrary termination of this hearing was unfair because the court never gave Floyd the opportunity to be heard fully. The appellate court found that fundamental fairness compelled the court to reverse the order.

Bjergum v. Bjergum, 392 N.W.2d 604 (Minn. Ct. App. 1986).
Houston County, Judge Robert E. Lee

The district court must make a finding of present intent to do harm to either the petitioner or the children in order to grant an OFP. Wife alleged incidents two years prior to the filing, and husband admitted to those incidents. But the husband denied unspecified incidents of child abuse. There

was not enough evidence to support an OFP giving the wife exclusive occupancy of the couple's home; OFP denied.

Blake v. Blake, No. C1-98-320 (Minn. Ct. App. Sept. 22, 1998) (UNPUBLISHED).
Winona County, Judge Dennis A. Challeen

The trial court issued an ex parte OFP removing the father from the family home and awarding the mother temporary custody of the parties' youngest child, who is severely disabled and requires around-the-clock nursing care. The trial court found that father's past and continuing actions were endangering the children's physical health, mental health, and emotional development and that there was reasonable fear of domestic violence and retaliation. The father appealed, claiming insufficient evidence. The appellate court held the findings were sufficient to exclude the father from the family home and to grant custody of the youngest child to the mother. This conclusion was also supported by the mother's affidavit stating that the father had harassed members of child's nursing staff and that social services had recommended that the two older children be placed in other residences until the father was removed from the home. Further, mother's affidavit included an application for a domestic abuse restraining order. Moreover, father did not request more particularized findings on the children's best interests so he cannot, on appeal, challenge the ex parte order for lack of findings.

Bode v. Drumm, No. CX-94-615 (Minn. Ct. App. Oct. 25, 1994) (UNPUBLISHED).
Stearns County, Judge Paul E. Widick

The court may use evidence of past abuse and violation of a previous OFP to grant a subsequent OFP. Bode received an OFP against Drumm. Drumm violated the order by stalking Bode and Bode's children, by making telephone calls, drive-bys and visits to the children's residence and schools, as well as to Bode's residence and employer. Bode petitioned for and the court granted another OFP. Evidence of past domestic abuse and the violation of the previous OFP supported the district court's decision to grant the OFP.

***Boecker v. Lorenz*, A15-0432 (Minn. App. November 16, 2015) (UNPUBLISHED)**
Washington County, no judge reported

Lorenz and Boecker share joint custody of their two children. The district court issued an OFP on behalf of both children. Lorenz appealed, arguing the evidence was insufficient to support an OFP because he did not intend to harm the child, there was insufficient evidence that his actions caused fear in the child who witnessed the event, and that the court should not take his courtroom demeanor into account. The Court of Appeals held that the evidence was sufficient to support the issuance of an OFP because the court found evidence of physical harm, regardless of intent. The Court declined to consider the question of fear of the witnessing child because appellant did not correctly brief the issue or provide relevant legal analysis. The Court of Appeals ruled that the district court did not consider Lorenz' courtroom demeanor in issuing the OFP, and if it had, it was acceptable to do so. The Court of Appeals affirmed.

Boniek v. Boniek, 443 N.W.2d 196 (Minn. Ct. App. 1989).
Kandiyohi County, Judge John C. Lindstrom

The court may use present behavior to infer an intent to harm. The husband physically and mentally abused wife during their 25-year marriage. Wife obtained an OFP, which expired at the time of the

divorce. After the divorce, the parties dated casually until the ex-wife became concerned for her safety. The ex-husband cut their marriage certificate in half and left it on her doorstep, he attacked an insurance salesman who was visiting, and drove around the ex-wife's home, making her scared and nervous. This evidence supported an OFP because the ex-husband exhibited behavior that allowed an inference of his intention to instill fear of physical abuse. Viewing the evidence in its totality, and in light of the ex-husband's history of abusive behavior, sufficient evidence existed to infer a present intent to inflict fear of imminent harm, bodily injury, or assault within the meaning of the Domestic Abuse Act.

Borrell v. Dupont, No. CX-95-687 (Minn. Ct. App. Jan. 16, 1996) (UNPUBLISHED).
Wright County, Judge Dale E. Mossey

For an OFP to be modified or extended, the petitioner must show that there is a present intention by the respondent to do harm or inflict fear of harm. The district court found that the ex-wife did not express a present, ongoing fear of respondent. The court also found that the parties had no direct contact in the three months since the dissolution. Therefore, there was no endangerment issue and the district court did not err in refusing to modify or extend the OFP.

Minnesota law prohibits mediation where a court finds probable cause to believe that domestic abuse has occurred. In this case, the court expressly found that domestic abuse had occurred by viewing a videotape where the ex-wife, while holding her child, was repeatedly struck by the ex-husband. He also drove her car into the side of his car when he tried to leave his driveway, while the children were in the back seat of her car. Therefore, the court erred by requiring mediation of future visitation disputes.

Bourke v. Voss, No. A07-1812 (Minn. Ct. App. Sept. 23, 2008) (UNPUBLISHED).
Chisago County, no judge reported

Respondent Bourke petitioned for an OFP after Bourke attempted to end the relationship with Voss, and Voss engaged in threatening behavior. Prior to the hearing, Bourke agreed to attend a deposition, but failed to appear or to offer an explanation for her nonappearance. Voss's attorney moved the district court to compel Bourke's appearance at a deposition on a subsequent date and for reasonable expenses, including attorney's fees. The district court ordered Bourke to appear for a deposition and pay $55. While being cross-examined at the hearing, Bourke turned to the district court and stated, "Your honor, I can't compete with this seasoned [a]ttorney, I'm just a normal person." Bourke then voluntarily withdrew her petition, and the district court dismissed the action. Voss moved to have the OFP matter vacated as frivolous and for attorney fees.

First, in order to refuse to grant attorney fees, the district court must determine that one of the two exceptions of Minn. R. Civ. P. 37.04 applies ((1) the failure to attend the deposition was justified, or (2) some other circumstance made the award of expenses and fees unjust). Second, the decision whether to award attorney fees and costs is discretionary and will not be overturned absent an abuse of that discretion. Finally, the issue of whether Bourke's petition was frivolous is moot. When Bourke voluntarily dismissed the petition the district court ordered dismissal of the case, and the matter ended.

***Braend v. Braend*,** 721 N.W.2d 924 (Minn. Ct. App. Oct. 3, 2006).
Ramsey County, Judge Charles H. Williams, Jr.

Petitioner obtained a subsequent OFP because Appellant repeatedly made phone calls to Petitioner after she was granted temporary sole custody of their two children. Appellant first argued that the subsequent OFP could not be granted unless he had violated a previous or existing OFP. However, it is only necessary that one of four alternatives exist in order to qualify for a subsequent order. Minn. Stat. § 518B.01, subd. 6a (2006). One is that Petitioner be reasonably in fear of physical harm from the respondent, which was objectively found in the record. Appellant then argued that the district court erred when they issued the subsequent OFP without a showing of "present harm or intent to do present harm." However, this standard is only necessary to issue an initial OFP.

When the district court granted the subsequent OFP, it was issued for a fixed period of two years. Appellant argued that the court did not make any findings that supported the duration of the OFP. "Nothing in the statute suggests that the district court must make specific duration-related findings when determining that an OFP with a fixed period of more than one year is appropriate." Finally, Appellant argued that the subsequent OFP would prejudice him in their dissolution proceedings and that it was against public policy. However, an OFP may be granted regardless of other actions pending between the parties.

Bragg v. Hudson, No. A06-2431 (Minn. Ct. App. Dec. 31, 2007) (UNPUBLISHED).
Ramsey County, Judge A. James Dickinson

The district court issued a no-contact order against Hudson in response to domestic abuse charges involving Bragg; Bragg subsequently petitioned for an OFP for herself and her children against Hudson. In response, Hudson filed a petition for him and the children against Bragg. At trial, the district court prevented Bragg's counsel from eliciting Hudson's testimony that he contacted Bragg in violation of the no-contact order by informing Hudson of his Fifth Amendment rights and also prohibited Bragg's counsel from arguing an adverse inference could be made from Hudson invoking those rights. The district court ultimately found testimony on both sides not credible and denied both OFP petitions. Bragg argued the district court erred in failing to recognize it could make an adverse inference from Hudson's assertion of his Fifth Amendment rights. The court of appeals held that while the district court was correct in allowing Hudson to assert his Fifth Amendment rights, that assertion did not prevent the court from making an adverse inference that Hudson had violated his no-contact order, reasoning such an inference did not punish Hudson for invoking his rights but for his failure to testify as he otherwise would have.

Bratsch v. Bratsch, No. A08-1503 (Minn. Ct. App. June 9, 2009) (UNPUBLISHED).
Dakota County, no judge reported

The district court erred in failing to consider former spouse's ability to pay $1,500 per month in spousal maintenance. The court did not abuse its discretion, however, in issuing an OFP. Minn. Stat. § 518B.01, subd. 6a(a) (2008) authorizes applicants to request the dissolution court to issue an extension of an existing OFP or issue a "subsequent order" for an OFP if the previously issued OFP is no longer in effect. Even if an initial request for a subsequent OFP is denied, Minn. Stat. § 518B.01, subd. 6a, does not prohibit a person from submitting a second application for a subsequent OFP. Although it would have been preferable for the district court to restate its earlier findings regarding the basis for the OFP, its failure to do so is not a basis for reversal on this record.

Brown v. Brown, No. A10-2086 (Minn. Ct. App. Jun. 13, 2011) (UNPUBLISHED).

Scott County, no judge reported

The father petitioned for an OFP on behalf of his daughter against her mother. The daughter currently lived with her mother but expressed a strong desire to move in with her father due to the physical abuse she was exposed to on a daily basis. The father provided an unsigned letter from the parties' custody evaluator expressing concern for the daughter's mental well-being. The district court concluded domestic violence occurred after looking at the evidence and hearing daughter testify and issued an OFP. On appeal, mother argued the evidence was insufficient and daughter's testimony was not credible to conclude domestic abuse was inflicted on daughter by her. The credibility of a witness is left to the discretion of the district court. Mother made no other arguments on appeal and failed to over evidence contrary to the district court's holding.

Buckley-Wallace v. Kresien, No. C5-96-252 (Minn. Ct. App. July 9, 1996) (UNPUBLISHED).
Cass County, Judge Michael Haas

The appellant is not allowed to assert the defense of improper notice for the first time on appeal. Kresien had a three-day notice of the evidentiary hearing for Buckley-Wallace's OFP against him. The OFP alleged acts of domestic abuse and requested the return of personal property. Both parties appeared pro se, and Kresien maintained that he should not be expected to know his rights under the statute. The courts hold pro se litigants to the same standard as attorneys. Because Kresien failed to raise the issue of lack of the five-day notice requirement at the hearing, he waived it.

Budd-Garcia v. Kieffer, No. A11-2283 (Minn. Ct. App. Nov. 26, 2012) (UNPUBLISHED).
Ramsey County, no judge reported

The court's application of the definition of "domestic abuse" as it is written in the statute is not error. On appeal, father contended that the trial court should have considered Minn. Stat. § 626.556 (2010) which he believed more accurately defined abuse when it determined that he had abused his son, although he never argued this to the trial court. Both son and mother testified, and the court found their testimonies to be credible and adequate to support a finding of domestic abuse. The appellate court affirmed the trial court's finding of domestic abuse and subsequent issuance of the OFP.

Bunda v Bunda, No. C5-97-570 (Minn. Ct. App. Jan. 6, 1998) (UNPUBLISHED).
Hennepin County, Judge Diana S. Eagon

Though both parties in this case agreed to the issuance of an OFP, respondent appealed because there were no findings and no hearing was held. However, when respondent agrees to the issuance of an OFP, the court does not have to hold an evidentiary hearing or make findings of abuse.

Burkstrand v. Burkstrand, 632 N.W.2d 206 (Minn. 2001).
Hennepin County, no judge reported

The MN Court of Appeals had ruled that the full hearing for an OFP must happen within the time limits set by the Domestic Abuse Act---within seven or ten days depending on the type of order sought. If the hearing was scheduled later or was continued to a later date, the court no longer had subject matter jurisdiction.

The Supreme Court reversed the appellate court decision, holding that the time frames set out in the Domestic Abuse Act do not limit the court's subject matter jurisdiction. These time frames are meant to give OFP cases priority on the court calendar and to place limits on ex parte orders. The court still has the authority to hear OFPs even if the full hearing happens later.

The decision does contain language which suggests that the ex parte OFP will expire after seven days, even though the court retains jurisdiction.

C

Cain v. Bratrud, No. CX-01-828 (Minn. Ct. App. Nov. 6, 2001) (UNPUBLISHED).
Olmstead County, Judge John S. Gowan

Cain and Bratrud were involved in a relationship for two months. Cain filed for an OFP, alleging that Bratrud grabbed and bruised her wrist, almost hit her with his car, left unwanted notes on her car and threatened her. Bratrud countered with an HRO petition, stating that Cain made uninvited visits to his home and made statements to his employer, which he alleged could have cost him his job. In a consolidated hearing, each party agreed with issuance of mutual HROs. Bratrud appealed, alleging that the court denied him a hearing and that the record does not have sufficient evidence to support issuance of the order. The court reviewed the transcript and determined that in thirty-two pages of transcript, the court questioned both parties. The court held that sufficient evidence had been presented. The court did not address the issue of a harassment order resulting from an OFP petition because this issue was raised in a responsive brief. Moreover, the court stated that there was consent to try these cases as mutual HRO cases.

***Cardinal v. Cardinal*,** No. A06-1307 (Minn. Ct. App. June 5, 2007) (UNPUBLISHED).
Ramsey County, Judge Dale B. Lindman & Judge Judith M. Tilsen

An ex parte OFP was awarded to Petitioner/wife Cardinal against her husband/Respondent Cardinal, giving temporary custody to the wife of their three minor children. At the OFP hearing, Respondent agreed to the OFP without a finding of domestic abuse. The court granted the order, but scheduled a separate evidentiary hearing to determine custody, parenting time, support and maintenance. Based on the evidence, the court issued an amended OFP. It found that domestic abuse had occurred, and granted wife sole legal and physical custody of the minor children.

Respondent argued that the district court abused its discretion by entering a finding of domestic abuse after he had agreed to the OFP without a finding of abuse. However, custody was at issue, and because domestic abuse is a consideration used in awarding custody, the court did not abuse its discretion in receiving testimony and evidence to this effect. Respondent also challenged the award of custody. In an OFP proceeding, the district court may grant temporary custody of minor children based on the safety of the victim and the children. Respondent argued that the district court erred by not making findings in regards to the children's best interests before the initial award of temporary custody. However, the statute does not require the district court to make best-interest findings in domestic abuse cases. Minn. Stat. § 518B.01 subd. 6(a)(4) (2006).

Champlin v. Champlin, Nos. C1-98-642/C6-98-653 (Minn. Ct. App. Sept. 15, 1998) (UNPUBLISHED).
Wright County, Judge Dale E. Mossey

An OFP was issued during a divorce proceeding. The father challenged the finding that he had committed domestic abuse and objected to the issuance of the OFP. Before the divorce trial, the mother went to the father's house to pick up children. They were not ready when she arrived, so she went in to gather their clothes. The father became angry, threw or shoved her outside where she landed on one of the children. The court issued the mother an OFP and awarded her sole legal and physical custody, establishing short-term visitation for the father. The findings demonstrate that the trial court weighed the credibility of testimony of the mother, father, and two boys, all of whom were present at the assault and testified at the OFP hearing. The appellate court said the trial court's findings were based on evidence and the credibility of witnesses. The OFP was valid. (Other divorce issues were appealed.)

Chosa ex rel. Chosa v. Tagliente**,** 693 N.W.2d 487 (Minn. Ct. App. 2005).
St. Louis County, Judge Terrence M. Aronson

Child's grandmother, on behalf of child, R.C., petitioned for an OFP from domestic abuse against child's mother. The district court granted an ex parte temporary OFP and the mother appealed. The Court of Appeals held that the evidence was not sufficient to infer present intent by mother to inflict a fear of imminent physical harm on child, and thus did not support issuance of an OFP. Even though there was evidence of neglect, (the mother had left the child unattended, there was evidence of inappropriate hygiene and inadequate medical care of the child, and the mother had been chemically dependent while caring for the child) this did not constitute domestic abuse.

Courtney v. McReynolds**, No. A15-0578 (Minn. Ct. App. Jan. 4, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

Courtney petitioned the court for an OFP, citing past abuse between 2008 and 2010. An *ex parte* OFP was granted the same day. Two days later McReynolds signed a document acknowledging the *ex parte* order. He requested a hearing using a document that indicated a hearing would be held within ten days. A hearing was held and the Court issued a two year OFP was issued. McReynolds appealed, arguing that service was deficient.

The Court of Appeals cited Patterson v. Wu Family Corp., which stated that defective service cannot later be raised as a defense by a party who invoked the court's power to determine a claim. McReynolds then argued that the district court abused its discretion in denying his request for a continuance to obtain an attorney and prepare for the hearing. The Court cited Minn. Stat. § 518B.01, subd. 5(b), that when a petitioner in an OFP action seeks only basic remedies such as those in an ex parte order, no hearing is required unless requested by the respondent and the fact that McReynolds had requested the hearing on a document that notified him of the ten day timeline, giving him eight days to prepare. Next, McReynolds argued that the district court abused its discretion and violated his due process rights in its evidentiary rulings. The Court of Appeals concluded that the district court acted within its discretion in its evidentiary rulings. Finally, McReynolds argued that the district court's findings were insufficient to support the issuance of an OFP. The Court concluded that given the evidence in the record and the district court's broad discretion, the district court did not err in issuing the OFP. The Court of Appeals affirmed.

Crosby v. Crosby, 587 N.W.2d 292 (Minn. Ct. App. 1998).
Beltrami County, no judge reported

As part of the court's authority in divorce proceedings, a trial court can issue a mutual restraining order to enable the parties to live in the same community peacefully and to encourage parental involvement. When determining whether a parent should share extensively in the physical care of the child, the trial court is free to evaluate the parents' ability to cooperate differently than when deciding whether the parents could successfully act as joint legal custodians. Upon divorce, the mother received sole legal custody of the child, but her ex-husband received one-half of the physical care. The court did not abuse its discretion because it could properly observe that the couple's communication problems would not impair the ability of mother and father to share physical custody. The mother also challenged the court's authority to issue a mutual restraining order when the father did not file for one. She had filed for an OFP, which was consolidated into the divorce proceeding. Because the court found no domestic abuse, the OFP was denied, but the mutual restraining order was within the court's authority in divorce proceedings in order to protect the parties' safety and uphold the child's best interests.

In re Cusick v. Cusick, No. A08-0557 (Minn. Ct. App. April 21, 2009) (UNPUBLISHED).
Ramsey County, no judge reported

Appellant Mr. Cusick made terroristic threats when he stated "something's going to happen to you and your friend. You won't know when and you won't know where." Mr. Cusick argued that the district court erred by relying on three prior OFPs obtained by (and later dismissed by) Ms. Cusick in determining that the current order was a subsequent order within the meaning of Minn. Stat. § 518B.01, subd. 6a. The court held that such error would be harmless, because the court's finding of terroristic threats provides a sufficient alternative basis for issuing the current OFP. In addition, the prior incidents would be probative because they aided the district court in determining the credibility of the conflicting testimony concerning the events on the dates in question, and they supported Ms. Cusick's testimony that Mr. Cusick's threats on the dates in question caused her to become afraid.

D

***Daniels v. Welch*,** No. A06-1335 (Minn. Ct. App. June 12, 2007) (UNPUBLISHED).
Washington County, Judge Gregory G. Galler

The district court granted an OFP to petitioner Daniels. Appellant Welch challenged the admission of evidence and issuance of findings of domestic abuse based on witness testimony that was not included in the OFP affidavit. The court noted that the district court had based the OFP on two incidents: one that was in Daniels' affidavit, and another that was testified to but not in the affidavit. The court found only one previous instance of domestic abuse is necessary for the district court to grant an OFP, which was supported in the affidavit.

Appellant argued that the district court erred by improperly admitting evidence of his oral abuse because it did rise to the level of terroristic threats. The court disagreed, noting that the OFP was granted based on intent to put Daniels in fear of physical harm, not based on the terroristic threat definition of domestic abuse. Further, Appellant's oral abuse was relevant because it provided the basis for the district court's inference that Appellant intended to put Daniels in fear of imminent physical harm.

Danner v. Danner, No. A11-0335 (Minn. Ct. App. December 19, 2011) (UNPUBLISHED).
Blue Earth County, no judge reported

Respondent obtained an OFP after appellant had a third-party retrieve his truck from respondent's workplace which she was using as her primary vehicle. Appellant immediately sold the vehicle because he could not financially afford it. In issuing the OFP, the district court relied primarily on a domestic abuse incident that occurred in October even though respondent petitioned the court for an OFP based on the December car incident. Appellant argued there was insufficient evidence to support the district court's issuance of the OFP. The court of appeals agreed and stated the present intent of physical harm or fear may be inferred from past abusive behavior, however, if there is not enough evidence on the record to establish there is a present intention to do harm or inflict fear, the court has no choice but to not issue an OFP. Because respondent did not make any allegations as to how the December incident placed her in imminent harm and there was no indication of appellant's present intent to commit physical harm, the district court's issuance of the OFP was reversed due to a lack of evidence.

***DeFatte v. DeFatte*,** No. A09-1367 (Minn. Ct. App. May 18, 2010) (UNPUBLISHED).
Hubbard County, no judge reported

The appellate court found the respondent failed to present evidence an emergency existed when she attempted to place an emergency call, and therefore the finding of domestic abuse based on interference with an emergency call was not supported by the record. However, because the district court's finding of domestic abuse is supported by evidence of "physical harm, bodily injury, or assault" and the infliction of fear of imminent physical harm, bodily injury, or assault, the district court did not abuse its discretion by issuing an OFP. Thus, any error in basing the OFP on alleged interference with an emergency call is harmless, and reversal is not warranted.

Dittes v. Dittes, No. C0-95-1945 (Minn. Ct. App. Feb. 27, 1996) (UNPUBLISHED).
Chippewa County, Judge Marquis L Ward

After issuance of an ex parte OFP, respondent is entitled to a "full hearing." This right includes the right to present and cross-examine witnesses, to produce documents, and to have the case decided on the merits. The district court denied respondent's request for a continuance to retain counsel and conducted the hearing without cross-examination of the parties. Even though the district court has wide discretion in addressing domestic abuse matters, it abused its discretion when it conducted an evidentiary hearing without some form of cross-examination of the witnesses.

Dretsch v. Bergdahl, No. C0-00-844 (Minn. Ct. App. Oct. 10, 2000) (UNPUBLISHED).
Dakota County, no judge reported

Bergdahl, the mother, fell asleep while driving. Her minor daughter was in the car. The father, Dretsch, sought and was granted an OFP on behalf of the child. The mother appealed, claiming there was no evidence of domestic abuse. The appellate court reversed, finding there was nothing in the record to support a finding of domestic abuse. The child suffered no physical injury and there was no present intent to inflict fear of physical harm.

State v. Dumas, No. CX-93-1608 (Minn. Ct. App. Mar. 8, 1994) (UNPUBLISHED).
Ramsey County, Judge Allan Markert

Failure to challenge the validity of an OFP when it is originally issued precludes a later attack on the order in a subsequent prosecution for its violation. After pleading guilty to an OFP violation, Matthew Dumas went to Beth Dumas' residence, again in violation of the order. Ramsey County issued a gross misdemeanor complaint, using the previous guilty plea as a basis for the enhanced charge. Matthew claimed inadequate notice and irregular service on the initial OFP hearing. Matthew did not raise these arguments, however, when the OFP was issued. The appellate court did not agree that either of the defects asserted by Matthew made the order void, thereby affecting the court's jurisdiction. The court found that Matthew had knowledge of the OFP and neither the shortened notice of the hearing on the order nor the prosecution's failure to serve him a signed copy of the order challenged the jurisdiction of the court.

E

Eddie v. Eddie, No. A03-2040 (Minn. Ct. App. July 6, 2004) (UNPUBLISHED).
Steele County, Judge Casey J. Christian

Ex-husband was granted an OFP against ex-wife, after describing a series of verbal confrontations where the ex-wife used vulgarities and threatened to call the judge if ex-husband did not pay for the children's prescription medication. The district court did not find that the ex-wife had ever owned a gun, had ever hit the ex-husband, or had ever threatened to hit the ex-husband. The ex-husband was also three inches taller than the ex-wife and outweighed her by almost 100 pounds.

The appellate court stated that the district court erroneously concluded that the Domestic Abuse Act does not require intent to put respondent in fear of imminent bodily harm. The appellate court held that the evidence was insufficient to support a conclusion that ex-wife's swearing in ex-husband's face and grabbing a blanket from his hands, however obnoxious, constituted an intent to put ex-husband in fear of imminent bodily harm. The OFP was reversed.

Edwards ex re. Edwards v. Edwards, No. A09-0196 (Minn. Ct. App. Aug. 18, 2009) (UNPUBLISHED).
Meeker County, no judge reported

Harsh language and threats of discipline may constitute domestic abuse. Thus, district courts are authorized to issue an OFP to restrain an abusing party from committing acts of domestic abuse, which includes physical harm, bodily injury, or assault or the infliction of fear of imminent physical harm, bodily injury, or assault by one family or household member against another. Accordingly, the district court did not abuse its discretion upon granting an OFP under the Domestic Abuse Act.

Appellant Edwards was involved in an argument with his former spouse, threw his cell phone at her and abruptly left respondent's home. Appellant later returned to the residence to pick up the couple's children. While in the car, appellant yelled at his 14-year-old daughter several times, as well as insisted she remove herself from the vehicle and walk to his residence, then pushed her back into his car and once in the car swung his arm toward the backseat telling his daughter he should slap her. The daughter testified she was terrified. The district court found domestic abuse occurred when appellant threw his cell phone and during the incident on the highway when appellant yelled at his daughter, and issued a long-term OFP. The district court determined that appellant's language and his attempt or threat to slap his daughter, which made the daughter fear that she would be hit, is

what tipped the case and ultimately resulted in their issuance of an OFP. In ordering the OFP, the district court rejected appellant's characterization of his actions as discipline. The appellate court found that the district court acted within its discretion by rejecting said characterization of discipline and subsequently ordering the OFP.

Ekblad v. Ekblad, No. C2-96-838 (Minn. Ct. App. Nov. 5, 1996) (UNPUBLISHED).
Dakota County, Judge Mary Pawlenty

The court may place travel restrictions on a party with visitation rights. The district court found the wife's testimony credible that she feared husband was attempting to flee, perhaps permanently, with the couple's son R.E. The husband conceded that he intended on keeping R.E.'s whereabouts concealed from the wife on the weekend of February 23, 1996. The husband also had R.E.'s passport at that time and had told his brother to lie to the police when they were trying to serve him with an OFP. This evidence supported the district court's conclusion that a travel restriction is appropriate on the husband's visitation rights. The district court also did not abuse its discretion in granting the OFP. The district court believed the supporting evidence that husband raised his hand over wife's face as she lay in bed and angrily unzipped his pants as though he would force her to have sex. The district court did not abuse its discretion by not granting the husband's OFP petition.

Ekman v. Miller, 812 N.W.2d 892 (Minn. Ct. App. 2012).
Crow Wing County, no judge reported

Respondent obtained a two-year order for protection (OFP) against appellant after he began harassing her once their ten-year relationship ended. Appellant continuously violated the OFP and its subsequent extensions by purchasing property next to respondent and peering over into her yard. Other harassing behavior included using a ladder to look into respondent's property and following respondent to work. The court of appeals found the district court did not err in extending an OFP to ten years for two reasons: (1) the appellant had violated a previous order; and (2) appellant continuously engaged in stalking behavior. In addition, the OFP statute plainly states mere violations of prior OFPs will support an extension rather than convictions.

Elmasry v. Verdin**,** 726 N.W.2d 163 (Minn. Ct. App. 2007).
Ramsey County, Judge Roseanne Nathanson

Petitioner/Appellant lived in a duplex owned by her parents. Respondent moved in as a tenant and they shared some of the living space as housemates. There was no romantic, familial, or sexual relationship between the two. Appellant filed for an OFP after she became afraid of Respondent's aggressive and threatening behavior, and his refusal to leave. The district court denied her petition for an OFP because it characterized the relationship as solely landlord/tenant, and stated that there needed to be "significant living-together circumstances." The Court of Appeals reversed, holding that the statute (Minn. Stat. § 518B.01) plainly states persons "residing together" meet the definition of "household member." Petitioner and Respondent shared common living areas; he was not renting a separate self-contained unit. "A person residing in one residence with another may obtain relief under the Domestic Abuse Act…despite the absence of a marital, familial, sexual, or romantic relationship."

***Ellingsworth v. Wazwaz*, No. A15-1583 (Minn. Ct. App. May 16, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

Respondent was granted an OFP against appellant in 2003; the original order was extended in 2005 and again in 2010. In 2015 she requested an extension of fifty years. The district court granted a fifty-year extension, but did not make the necessary findings. For this reason, the Court of Appeals remanded the case to the district court to either make a finding that supports the fifty-year extension or to deny the extension request. The court may grant a fifty-year extension if they find that "the respondent has violated a prior or existing order for protection on two or more occasions" or that "the petitioner has had two or more orders for protection in effect against the same respondent."

El Nashaar v. El. Nashaar, 529 N.W.2d 13 (Minn. Ct. App. 1995).
Itasca County: Judge Peter N. Hemstad

The district court cannot continue an ex parte order in effect for more than fourteen days without a full hearing and an appropriate finding of domestic abuse. To obtain a writ of prohibition, the husband must establish that the district court exceeded its lawful authority, causing injury for which no ordinary remedy is adequate. On December 22, 1994, the wife obtained an ex parte temporary OFP alleging that the husband had harassed and stalked her and her children. During the hearing, on January 6, 1995, the district court did not take any testimony and made no findings on the allegations of domestic abuse. Over the mother's objection the district court rescheduled the hearing for January 13, due to insufficient time on the schedule to hold a hearing. The appellate court granted the husband's writ of prohibition on the basis that the district court lacked authority to continue the temporary order and hearing date on the ground that the court needed additional time to conduct a full hearing and make appropriate findings. The right to a "full hearing" includes the right to present and cross-examine witnesses, to produce documents, and to have the case decided on the merits. The mere appearance of counsel at the January 6 hearing, without acceptance of any evidence, was insufficient to satisfy the "full hearing" requirement. The district court erred in continuing the order, which denied the husband visitation, without a finding that the safety of the wife or the children would be jeopardized by visitation.

In Burkstrand v. Burkstrand, *632 N.W.2d 206 (Minn. 2001), the Supreme Court of Minnesota stated the following: "If subject matter jurisdiction is divested every time a hearing on a petition for an order for protection is not held within the statutory time frames, victims of domestic abuse will be forced to begin the protection process anew. This not only has an impact on public safety, but may also penalize a petitioner when delay is caused by the court, respondent, or by other events beyond the petitioner's control…. Clearly, divesting the district court of subject matter jurisdiction under such circumstances interferes with the purpose of the Act and is not a consequence dictated by the Act's language. Thus, we hold that neither the statutory language nor the other indicia of legislative intent dictate that the court loses jurisdiction over appellant's petition when a hearing is not held within the time frames of Minn. Stat. § 518B.01, subd. 7(c)." The opinion of the* El Nashaar *court with respect to the fourteen day time frame has thus been overruled.*

State v. Errington, 310 N.W.2d 681 (Minn. Ct. App. 1981).
Rice County, Judge Warren F. Plunkett

The Domestic Abuse Act does not violate the separation of powers doctrine. The district court improperly dismissed the charges on the basis that the Act was unconstitutional. The clerk of the court's office routinely helps parties in filing conciliation court proceedings and advises them on the

procedures used. The only difference in a domestic abuse situation is that assistance is given only to the party alleging abuse. The ministerial functions in question do not constitute the practice of law any more than the giving of a *Miranda* warning by a police officer to a defendant constitutes the practice of law. As long as the judges, their law clerks, and other support staff intimately connected with them do not play a role in assisting the petitioner, the alleged abusing party has no reasonable basis to believe the court is biased against him.

E.S-K ex rel. D.J.K., S.L.K., A.S.K. v. M.S.K., No. CX-01-2028 (Minn. Ct. App. May 14, 2002) (UNPUBLISHED).
Hennepin County, Judge Charles A. Porter, Jr.

During a divorce, mother filed for an OFP for herself and on behalf of the minor children. Prior to the hearing, the children were evaluated by a therapist. Father was unaware of the evaluation. An evidentiary hearing was held where therapists, other witnesses and the parties testified. The OFP was issued. Father appealed, claiming insufficient evidence to support the finding of domestic abuse and denial of due process by not being given sufficient notice of the therapist evaluations of the children or being allowed to have an independent evaluation of the children. The appellate court agreed with the father and overturned the OFP. The record contained no evidence that the father intended to harm the mother. There was also no evidence that the children were harmed by the father. The therapist's statement that the children appeared to fear their father was not sufficient to show harm or intent to harm. The court also said the father should have been allowed an independent evaluation of the children.

Eustathiades v. Bowman, No. C3-00-269 (Minn. Ct. App. Sept. 5, 2000) (UNPUBLISHED).
Ramsey County, no judge reported

In the divorce, the mother was granted physical custody of the children and the father had visitation rights. The mother petitioned for an OFP for her children, alleging physical abuse. Child protection was notified and conducted an investigation. At the OFP hearing, the father requested a continuance because child protection had not completed its report on the issue of whether abuse had occurred. The request was denied. The testimony at the hearing was that of the mother, who confirmed her allegations, and the children's chiropractor, who asserted that the children's injuries he had seen could be consistent with abuse by their father. The OFP was issued. The father appealed. The appellate court found that a party has a right to a full hearing on domestic abuse allegations, including presenting and cross-examining witnesses and producing documents. Here, the father was not allowed to produce a document and the court failed to appropriately assess the worth of the document. The district court inappropriately denied the continuance determining that the child protection report was not relevant without even seeing it or making itself aware of its contents. Case remanded.

Evans v. Getty, No. C5-92-405 (Minn. Ct. App. July 7, 1992) (UNPUBLISHED).
Ramsey County, Judge Roland J. Faricy, Jr.

The district court granted Evans an OFP against Getty, based on evidence that Getty tried to grab Evans' baby from the car and then followed her to work while driving erratically and yelling. Getty claimed the OFP adversely affected his parental rights, as the court in a subsequent adjudication proceeding relied upon the findings made in the OFP proceeding to limit mediation and require supervised visits. The appellate court determined that the evidence was sufficient to support the

OFP. The court also rejected Getty's argument that he was denied due process when the lower court limited the number of witnesses he could call and denied him a rehearing because of the limitation. Because Getty's counsel admitted the testimony would be repetitive, the trial court could properly exclude the witness.

State v. Evenson, 554 N.W.2d 409 (Minn. Ct. App. 1996).
Winona County, no judge reported

A person may be convicted of burglary if there is an OFP requiring the party to vacate the martial home and not return for any reason. Evenson returned to the marital home to get his gun and keys after being served with the order. Later, he returned with the gun to terrorize his wife. "Lawful possession" under the burglary statute is defined without regard to ownership. Therefore, although the OFP did not affect Evenson's ownership interest, it deprived him of "lawful possession." The court did not err in convicting Evenson of felony burglary because the OFP specifies that violation of the order is a misdemeanor offense. The prosecutor may prosecute under any statute without regard to the penalty.

F

Fitzgerald v. Fitzgerald, 406 N.W.2d 52 (Minn. Ct. App. 1987).
Winona County, Judge S.A. Sawyer

A court may not issue a mutual OFP when one party did not petition for an OFP. Wife filed for an OFP for one year, as well as the return of her personal belongings. The court heard no testimony and asked questions only of the husband, who did not oppose the order. The court erred in issuing a mutual restraining order for three months and in failing to rule on the request for belongings. The court should have allowed the wife to present evidence, and may order relief in its discretion, including assistance from the sheriff to recover property. The court properly issued the wife's OFP due to the husband's testimony outlining previous incidents of domestic abuse.

Flom v. Peltier, No. C1-99-1610 (Minn. Ct. App. Mar. 28, 2000) (UNPUBLISHED).
Ramsey County, Judge Foley

Flom filed for and received an OFP against Peltier. The OFP, among other things, required Peltier to attend counseling. Peltier appealed, arguing there was no evidence that he committed domestic abuse and that the court could not order him into counseling. By the time of the appeal, there was no longer a relationship between the parties. Further, Flom did not request counseling and the OFP was near its expiration date. The appellate court noted that counseling in domestic abuse cases is "viewed very seriously." They remanded the case to the district court for an explanation regarding the counseling mandate, as well as a clarification on the requirements of counseling.

Fonss v. DeMartini, No. A10-1009 (Minn. Ct. App. Feb. 8, 2011) (UNPUBLISHED).
Redwood County, no judge reported

Respondent Fonss obtained an emergency OFP against her ex-husband appellant DeMartini right before he was set to be released from prison. Respondent detailed numerous accounts of physical abuse, evidence appellant was harassing her from prison, and a belief she would be in great danger upon his release. The district court issued the OFP which prohibited appellant from having any

contact with respondent; ordered appellant to remain 500 feet away from her home; prohibited him from entering her place of employment; and prohibited him from possessing firearms for one year. Appellant argued certain provisions of the OFP were excessively restrictive. The court disagreed, concluding the OFP was within its statutory authority because it prohibited contact between the parties in almost the exact same language used in the statute.

G

Gada v. Dedefo, 684 N.W.2d 512 (Minn. Ct. App. 2004), *superseded by statute*, Minn. Stat. § 518B.01, subd. 6(a)(4) (2005).
Hennepin County, no judge reported

Gada filed for and received an OFP against Dedefo. At the hearing, the district court refused to grant Dedefo, a licensed attorney, a continuance, finding that the petition gave him sufficient notice regarding preparation for the hearing. The district court made a finding that Dedefo committed domestic abuse against Gada, and gave sole legal and physical custody of the parties' infant child to Gada. Dedefo appealed, claiming that the district court abused its discretion in denying him a continuance; that there was insufficient evidence to warrant the issuance of an OFP; and that, because custody was contested, the district court erred by not making best interest findings. The appellate court held that refusing a continuance was a reasonable exercise of the district court's discretion. The appellate court held that the record supported the district court's decision to grant the OFP. However, the court held that "[t]he plain language of the statute requires findings as to the best interests of the child when custody is contested. Thus, the district court was required to make findings as to the best interests of the youngest child." The case was remanded to the district court for best interest findings.

In 2005, the legislature amended subdivision 6(a) of § 518B.01. The section now states that a "court may provide relief as follows: . . . (4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. *In addition to the primary safety considerations, the court* may *consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. . . ." (emphasis added). Thus, the best interest findings mandated by the holding of* Gada *are no longer required.*

***Gasper v. Gasper*, No. A14-2133 (Minn. Ct. App. August 24, 2015) (UNPUBLISHED)**
Dodge County, no judge reported

In 2012, appellant was convicted of misdemeanor domestic assault of the parties' four-year-old son. In 2014, appellant was charged with a gross misdemeanor for assaulting the parties' eight-year-old son. An emergency OFP was granted for the respondent and three children, including supervised parenting time for the appellant.

Appellant appealed, arguing that the district court violated his right to due process during the OFP hearing because the district court denied him the opportunity to present and cross-examine witnesses. The Court of Appeals cited Beardsley v. Garcia, stating "Although a petitioner in an OFP proceeding in entitled to a hearing, the failure to request a particular procedure…constitutes waiver." Since appellant made no objection, there was no decision to review. Appellant also asserted that the district court prevented the parties from offering evidence. The Court of Appeals found no support in the record for that assertion.

Appellant next argued that he was entitled to have his case decided on the merits and the district court's "failure to allow for a hearing as required under the Act" deprived him of this right. The Court of Appeals rejected appellant's argument stating that the record "unambiguously reveals that the district court carefully considered the arguments and ordered the OFP based on the substance of the parties' evidence and testimony." Appellant also argued that the record did not support the district court's findings that appellant committed domestic abuse and is a danger to respondent and children. The Court of Appeals concluded that the allegations, the prior conviction, and the pending criminal charge provide sufficient support for the district court's findings. Appellant contended that respondent made no specific allegations of abuse against her or the child who had not been a victim in either of the domestic abuse charges, and that they should have not been included in the OFP. The Court of Appeals cited the Domestic Abuse Act, which defines domestic abuse to include "the infliction of fear of imminent physical harm, bodily injury, or assault," and *Pechovnik v. Pechovnik,* that a court "may infer a present intent to commit domestic abuse against one family member based on the totality of the circumstances, including previous abusive behavior." The Court of Appeals affirmed the district court's decision to grant an OFP on behalf of respondent and all three children.

Gerads v. Gerads*,* No. C5-02-777 (Minn. Ct. App. Jan. 28, 2003) (UNPUBLISHED).
Stearns County, Judge Wright

An OFP requires specific findings on domestic abuse and particularized findings of fact sufficient to support determinations of custody and other issues. Husband/father petitioned for an OFP against his wife on behalf of their two children, alleging that the wife has a history of committing domestic abuse against them. In his ex parte petition and at the hearing, the husband recounted several incidents in which the mother's statements (e.g. Heaven is the children's real home and she cannot wait until they get there) frightened the children. The husband also described several hitting and yelling incidents that occurred while the children were at the mother's home and prompted the children to call their father because they did not feel safe. Following the hearing, the district court granted a one-year OFP for the children, granting the father sole physical and legal custody. For its findings of fact regarding the acts of domestic violence, the district court wrote "SEE PETITION" on the printed form without making any particularized findings. Mother appealed, arguing that the findings of fact and conclusions of law were insufficient and that the record did not support a finding that she intended to cause her children fear of imminent harm. The Court of Appeals remanded the case to the district court for more detailed findings, stating that the petition alone lacked sufficient detail for meaningful review.

In the Matter of: Nancy J. Gibson o/b/o A.G. v. Gibson, No. A12-0892 (Minn. Ct. App. March 18, 2013) (UNPUBLISHED).
Chisago County, no judge reported

Respondent stepmother has standing to petition for an OFP on behalf of her minor stepdaughter since the statutory definition of family or household member includes former spouses and individuals who have lived together in the past. Stepmother petitioned for an OFP on behalf of her stepdaughter against her ex-husband who is the minor's father. Daughter testified at the court hearing that she suffered emotional harm while living with appellant father. Father stated that he never physically abused, struck or threatened his child. The trial court considered the totality of the circumstances and determined that appellant's actions constituted domestic abuse even though he never physically touched his daughter. The court further found that respondent was a reputable

adult older than 25 years of age and that it was in the minor's best interest that a petition was brought on her behalf. However, the court stated that respondent was not a family or household member of the minor child. Respondent asserted that she was a family or household member since she resided with appellant and minor from 1999 until 2007. Although the appellate court disagreed with the trial court's finding that respondent was not a family or household member, it affirmed the court's issuance of the OFP.

Gold v. Larsen, No. A06-665 (Minn. Ct. App. Mar. 13, 2007) (UNPUBLISHED).
Freeborn County, Judge John A. Chesterman

Appellant challenged the extension of an OFP awarded to Petitioner Gold on behalf of her and her children. Appellant Larsen argued that the OFP should be reversed because there were not sufficient findings. The district court did not make oral findings, but did fill in the blank on the OFP extension form providing "[p]etioner is reasonably in fear of physical harm from respondent." This was a sufficient finding to extend the OFP. There was also sufficient evidence of children's fear of Appellant to extend on their behalf. Appellant claimed that because Gold was the Petitioner for the extension, it applied only to her and not to the children. But the "Petitioner" includes and names the children in the extension. "Thus, the district court's findings that '[p]etitioner is reasonably in fear of physical harm from [appellant]' includes both respondent and the children." Also, the language in the OFP orders Appellant to have no contact with the children and not to abuse them. It was clear that the district court intended the OFP to protect Gold and her children.

H

Habtesilassie v. Yohannes, No. A07-2324 (Minn. Ct. App. Nov. 25, 2008) (UNPUBLISHED).
Ramsey County, no judge reported

The district court abused its discretion by imposing a $750 sanction against appellant without first ordering appellant to show cause. The district court did not abuse its discretion when it extended an OFP for five years based on the parties' history and allegations by respondent. The district court also did not abuse its discretion when it denied appellant's motion to vacate the default judgment because appellant did not satisfy all four factors set forth in Minn. R. Civ. P. 60.02 ((1) a reasonable defense on the merits; (2) a reasonable excuse for his or her failure to act; (3) that he acted with due diligence after notice of the entry of judgment; and (4) that no substantial prejudice will result to the opposing party if the motion to vacate is granted.). The district court did, however, abuse its discretion when it imposed the sanction of $750 without following the procedural guidelines set forth in Minn. Stat. § 549.211, subd. 4(b), and Minn. R. Civ. P. 11.03(a)(2). The district court must issue an order describing the conduct and directing an attorney or party to show cause why his conduct does not warrant a sanction. In this case, appellant was not given an opportunity to correct his sanctionable conduct or to explain why he should not be sanctioned.

Hafermann ex rel. Hafermann v. Hafermann, No. A10-591 (Minn. Ct. App. Jan. 4, 2011) (UNPUBLISHED).
Scott County, no judge reported

Respondent Jessica Hafermann obtained an OFP against her former husband, appellant Kevin Hafermann. Appellant argued the evidence the OFP was based on was "limited" and "insufficient to support a legal conclusion of physical harm or intent to inflict imminent fear of physical harm." The

record detailed instances where appellant had respondent followed to work by three trucks with no license plates; broke into her house and left a loaded rifle; and an instance where respondent found the lug nuts on her car had been tampered with and believed appellant was the cause. The court disagreed with appellant's argument the record did not support the issuance of the OFP. The court reversed the district court's issuance of an OFP on behalf of their children because respondent made an oral motion to amend the original OFP and did not include an affidavit to support her petition.

Hall vs. Arend, No. A15-2088 (Minn. Ct. App. November 7, 2016) (UNPUBLISHED).

Respondent Hall sought an OFP against appellant Arend for both herself and the couple's minor child. During the altercation in question for the OFP petition, Hall alleged that she was holding the couple's 23-month old when Arend pushed her, causing the child to cry. When Hall tried to leave, Arend "yank[ed] the baby's arm". Arend claimed that a recording he submitted into evidence proved that the child was cooing happily, not crying, making the OFP against him covering his child improper. The Court of Appeals found that, although the district court found Hall to be credible, she had failed to meet her burden of proof to show by preponderance of the evidence that the OFP should be issued for her child as well. The district court was found to have abused its discretion by issuing the OFP to cover the child, and the Court reversed that order.

Hall v. Hall, 408 N.W.2d 626 (Minn. Ct. App. 1987).
Ramsey County, Judge Harold W. Schultz

There are no requirements of an overt physical act to support issuance of an OFP. Verbal threats, depending on the words and circumstances, can also inflict fear of imminent harm. Wife's allegations of verbal abuse included yelling, swearing, name-calling and threats that she would "end up in a box." The husband's threats were sufficiently specific and violent to support wife's claim of physical fear and were even more serious when considered in the context of past physical abuse, which in two instances required medical attention. The wife did not allege acts of domestic abuse against the children. The court ordered supervised visitation to prevent the possibility of future incidents in front of the children. The Domestic Abuse Act provides for this remedy. In addition, the statute specifically permits a petition for relief regardless of whether there is a pending lawsuit, complaint, petition, or other action between the parties.

Dissent #1: Wife alleged no incidents of physical harm to the children or to herself had occurred since 1981. Although husband conceded having used abusive language toward the wife and having threatened her with a custody battle, there was no testimony at the hearing about specific threats. The trial court in the dissolution ordered liberal visitation and the domestic abuse court made an error by ordering supervised visitation.

Dissent #2: There was no evidence in the record to support a finding of any potential danger to the children that may result if the court granted the husband unsupervised visitation. He should not be punished for the abuse to his wife at the expense of his relationship with his children.

Dissent #3: A single admission of the wife did not indicate an act of abuse. It is evident that the trial court made its findings solely by sizing up the husband's demeanor in the courtroom. The Domestic Abuse Act provides prompt and easy access to the courts on abuse cases. However, this does not permit the grant of great powers, rendering privacy interests, liberty interests, and property

interests at risk without the imposition of restraint brought about through the mandate for due process.

Haliburton v. Jackson*,* No. C3-02-373 (Minn. Ct. App. Oct. 22, 2002) (UNPUBLISHED).
Ramsey County, Judge Toussaint

Evidence that is otherwise admissible must also be authenticated before being considered by the court. Appellant Jackson argued that the trial court improperly allowed a police report to be admitted into evidence without being authenticated. The Court of Appeals agreed with appellant. The police report was inadmissible because it contained hearsay statements that were not allowable under any hearsay exception. The police officer that made the report was not present as a witness to authenticate the report. The referee improperly allowed the police report into evidence without authentication. Because there was no other admissible evidence supporting the issuance of the OFP, the Court of Appeals reversed the issuance of the order. The Court of Appeals affirmed the referee's decision not allowing children to testify against their parents. Family Court is allowed to limit testimony when the facts of the case are uncomplicated.

The appellant next argued that he was denied review of the referee's decision. The Second Judicial District denied Jackson's review because it was involved in a pilot program that did not allow for such a review. The Court of Appeals affirmed this decision by the Second Judicial District.

Halverson v. Taflin, 617 N.W.2d 448 (Minn. Ct. App. Oct. 3, 2000).
Beltrami County, no judge reported

Under Dennis Halverson and Suzanne Chute's divorce, they had joint legal custody and Suzanne Chute had sole physical custody of their daughter. Halverson filed for and received an OFP on behalf of his child against Chute's boyfriend, Taflin. Halverson was given temporary physical custody of the child under the OFP. A month after the OFP hearing, Chute filed a motion to vacate the OFP. The motion was denied as an untimely motion to intervene. Chute appealed. The appellate court held that the timeliness of intervention is determined on a case-by-case basis, taking into consideration how far the case has progressed, the reasons for delay in seeking intervention, and the possible prejudice to the parties. Chute should have been allowed to intervene to protect her fundamental parental rights. The OFP was reversed and remanded to the trial court.

In the matter of: Larissa Michelle Hansen and o/b/o Minor Child. v. Richter**,** No. A17-1063 (Minn. Ct. App. January 16, 2018) (UNPUBLISHED)
Isanti County, no judge reported

Respondent petitioned for an ex parte OFP against Appellant. At the hearing, the district court advised Appellant that the court could "issue an order without making a finding of domestic abuse," if he agreed Respondent's request for an OFP. The Appellant agreed and the court entered an OFP, which stated, "[Father] does not object to an Order for Protection and understands that the order will be enforced as if there was an admission or finding of domestic abuse," and included the firearm restriction. Appellant appealed and argued that the district court abused its discretion by issuing an OFP when the evidence did not support the finding that Appellant agreed to the OFP and understood that it would be enforced as if he admitted to domestic abuse.

The appellate court reversed the district court's decision, finding the court's advisement to Appellant contained several mixed legal principles regarding the effect of allowing the court to enter the OFP if Appellant waived his right to a hearing. The Court held that Appellant clearly did not understand the full extent of his waiver, and therefore, could not be valid. Additionally, the Court noted that is it inconsistent to impose a firearm restriction without making a finding that the abusing party poses an imminent risk of causing another person substantial bodily harm.

Hatfield v. Anderson, No. C5-94-604 (Minn. Ct. App. Sept. 20, 1994) (UNPUBLISHED).
Beltrami County, Judge Terrance Holter

The petitioner for an OFP must show "present intention to do harm or inflict fear of harm." The trial court granted ex-wife an OFP from domestic abuse incidents of harassment, yelling, vandalism, threats, and stalking by her ex-husband. Ex-wife produced evidence that ex-husband violated the previous protection orders by not leaving her alone, by trying to get her to pull her vehicle over on the road, and by delivering letters, flowers, packages and obscene cards. Because the record contained no evidence of fear of imminent physical harm, nor allegations to show ex-husband intended to inflict fear of imminent harm, the district court erred. The OFP was reversed, but ex-wife could get relief under the harassment statute.

Hatfield v. Anderson, No. C2-95-1123 (Minn. Ct. App. Jan. 30, 1996) (UNPUBLISHED).
Beltrami County, Judge James E. Preece

If new evidence establishes renewed grounds for a denied OFP, the court may grant an OFP based on the new conduct without being barred by res judicata. One month after the Minnesota Supreme Court denied further review of ex-wife's case, the ex-husband called her 42 times between the hours of midnight and 4:30 a.m. Ex-husband also accosted ex-wife as she was leaving school and shook his fist in her face, threatening her if she refused to talk with him. Ex-husband also made numerous calls which led ex-wife to believe he would do something to her. The district court did not abuse its discretion by granting the OFP.

Hassebroek v. Hassebroek, No. C6-99-1862 (Minn. Ct. App. May 23, 2000) (UNPUBLISHED).
Anoka County, no judge reported

Mother filed for an OFP against the father for herself and on behalf of the children. She also requested appointment of a guardian *ad litem* (GAL). At the hearing, conflicting testimony was given by mother and father. The trial court acknowledged that the mother might be afraid, but found no domestic abuse and denied the order. The trial court did not appoint a GAL. The mother appealed. The appellate court found that GAL appointment is not based on allegations of child abuse. The trial court must believe the children were abused or neglected before appointing a GAL. The trial court's statements on the record constitute findings. Also, the trial court determines witness credibility. Noting that the trial court found no domestic abuse, the appellate court upheld the OFP.

State v. Hebert, No. C3-91-1882 (Minn. Ct. App. June 6, 1992) (UNPUBLISHED).
Dakota County, Judge George H. Hoey

Hebert was convicted of second degree felony murder for the death of his wife. The trial court did not abuse its discretion by allowing testimony from a number of witnesses concerning past threats

and physical assaults by Hebert on his wife. The trial court did err, however, in allowing evidence of Hebert's admission of abuse at the OFP hearing because the Domestic Abuse Act states that "Any testimony offered by a respondent in a hearing pursuant to this section is inadmissible in a criminal proceeding." Hebert's statement was not made under oath and he himself brought up the admission in his own testimony. But this error was harmless, as there was sufficient evidence to establish a third degree assault and false imprisonment, the two felonies underlying the two separate convictions of second degree felony murder.

***Henke v. Shulbe*, No. A15-2011 (Minn. Ct. App. August 31, 2015) (UNPUBLISHED)**
St. Louis County, no judge reported

The district court proposed issuance of an OFP that required supervised parenting time without a finding of domestic abuse. Both parties agreed, details were reviewed on the record, and the OFP was issued. A domestic violence advocate was present and addressed the court to reiterate Henke's wishes. Shulbe subsequently claimed he misunderstood and had only intended to agree to supervised parenting time, not an OFP.

On appeal, Shulbe challenged Henke's abuse allegations, the district court's authority to grant the supervised parenting exchanges and the presence of an advocate. The Court of Appeals held that the district court properly found that Shulbe voluntarily and knowingly agreed to the OFP because: he was brought into court for an OFP hearing, the court told him the scope of the hearing was limited to the OFP, the supervised parenting time discussion was continually framed in the context of an OFP, he verbally agreed on the record, and had time to review the signed copy. The Court of Appeals also held that the district court had broad authority to grant supervised parenting exchanges in relation to the proposed OFP. The Court of Appeals held that the Minnesota Supreme Court has authorized domestic abuse advocated to attend OFP hearings and address the court at court's discretion.

Henry v. Henry, No. A05-798 (Minn. Ct. App. Jan. 10, 2006) (UNPUBLISHED).
Swift County, Judge David L. Mennis

The decision to grant an OFP is within the district court's discretion. After a full hearing, the district court determined appellant created an "atmosphere of intimidation and harassment." Appellant challenged the district court's issuance of an OFP, arguing there were insufficient evidence and no intent to harm.

After a verbal argument, appellant followed respondent into their bedroom, blockading the door and refusing to permit her to exit. Appellant did not move away from the door until the parties' minor daughter entered the bedroom. Respondent testified that the child was scared of appellant, to the extent that the child was afraid to sleep alone. Respondent also testified that appellant abused her, respondent, in the past. The district court found that, given the argument in the bedroom and the size and strength disparity between appellant and respondent, appellant instilled fear within respondent.

The appellate court gave deference to the determination of the district court because the court below had the chance to hear testimony, assess the credibility of witnesses, and acquire an understanding of the circumstances. To reverse an order for an OFP, the court must have a "definitive and firm conviction that a mistake has been made." Noting that the definition of

domestic abuse is broad enough to enable a court to find that when one family member intends to cause, in the mind of a second family member, fear of harm to a third family member, the court held that the findings of the district court were not clearly erroneous. Not only did the record support a conclusion that respondent was reasonably in fear of appellant, but the evidence also supported the conclusion that appellant's daughter also harbored fear.

***Hensley v. Hall*,** No. A13-1478 (Minn. Ct. App. June 6, 2014) (UNPUBLISHED)**.**
Redwood County

The Court of Appeals held that Hensley's affidavit for service by publication did not satisfy the statutory prerequisites under Minn. Stat. § 518B.01, subd 7(d). Under the statute, service by publication is permitted "provided the petitioner files with the court an affidavit stating that an attempt at personal service made by a sheriff or other law enforcement or corrections officer was unsuccessful because the respondent is avoiding service by concealment or otherwise, and that a copy of the petition and notice of hearing has been mailed to the respondent at the respondent's residence or that the residence is not known to the petitioner." Minn. Stat. § 518B.01, subd. 7(d). Hensley's affidavit stated that she did know Hall's address and did not allege that service was thwarted by Hall or that the paperwork was mailed to Hall. The Court held that service of the *ex parte* OFP was ineffective. The OFP issued by the district court was void for lack of personal jurisdiction. The Appellate court returned the parties to the parenting time conditions that existed before the OFP.

Hessel vs. Mohr, No. A16-1467 (Minn. Ct. App. May 8, 2017) (UNPUBLISHED).
Winona County

Appellant Mohr and Respondent Hessel are the father and mother, respectively, to two children, M and A. The couple divorced in 2013 and had joint custody. In 2016, M told Hessel for the first time that Mohr had sexually abused M in 2011. Hessel filed an OFP for herself and her children, stating that Mohr had abused M, and that A was now the age M had been at the time of the abuse. At the evidentiary hearing, M did not testify. The district court granted the OFP to Hessel and both of the children because of the allegation of sexual abuse; noting that if and when Mohr can disprove and debunk this allegation, he can come back to court and seek to have the OFP rescinded. The Court of Appeals commented that the district court failed to make any findings regarding domestic abuse, only that they had reiterated that there was an allegation of sexual abuse. Because the evidence the OFP was based upon was solely based in hearsay evidence, they found again that the district court erred. Reversed.

Hicks v. Beyer, No. A11-1775 (Minn. Ct. App. June 11, 2012) (UNPUBLISHED).
Olmsted County, no judge reported

Respondent-father obtained an emergency ex parte OFP on behalf of his three children against the children's mother's and her boyfriend, appellant, because the children were alleged appellant abused them while in their mother's care. At the OFP hearing, the mother testified the children were not in danger and she never left them unattended with appellant. She testified respondent was abusive in their past relationship and she moved in with appellant to escape respondent's abuse. Appellant testified he never touched the children but did admit to speaking to them sternly when they misbehaved. The district court found there was no basis for the OFP on behalf of the two youngest children. However, the district court did issue an OFP against appellant for the eldest son based on

allegations and testimony made by appellant. The court of appeals reversed the district court's issuance of the OFP because the district court's finding appellant yelled and spanked respondent's son was not supported by the evidence. It stated the district court relied solely on hearsay statements when it made its ruling.

Hicks v. Hicks, No. A16-2043 (Minn. Ct. App. Oct. 23, 2017) (UNPUBLISHED).
Hennepin County, no judge reported

Domestic abuse includes nonverbal threatening behavior that inflicts fear of imminent physical harm, particularly when such behavior is part of an abusive pattern or history. Wife files an OFP after her husband lifted up part of a counter and sink during an argument with his wife, causing her to fear for her safety. The second incident involved the husband shattering a beer bottle and a shard cutting the wife. The husband appealed arguing that evidence was insufficient he committed domestic violence because there was no physical harm or express verbal threat. The appellate court held the district court decision granting OFP for the wife because the nonverbal threatening behavior regarding the two incidents inflicted imminent fear and constituted domestic abuse.

Hill v. Brockamp, No. C2-98-973 (Minn. Ct. App. Jan. 14, 1999) (UNPUBLISHED).
Pine County, Judge Douglas G. Swenson

Father and mother have children together but are not married. Mother requested and received an OFP against father, valid from May 1995 until May 1997. On May 4, 1998, mother filed for a subsequent OFP for a two-year period. Mother claimed father told the couple's 13-year-old son that he was going to "ream Hill [mother] a new a—hole," father had continually called several places in their small town looking for mother, mother was afraid of father, and their children were "shook up" because father had threatened her and hurt her in their presence. Mother was granted the subsequent OFP. Father appealed, claiming that he never physically abused mother. The appellate court ruled that after the initial OFP has expired, the court may grant a subsequent OFP upon a showing that the victim is reasonably frightened that she will be injured by the abuser. This fear may be a result of physical abuse or verbal threats.

Holm v. Holm, No. C5-00-1357 (Minn. Ct. App. Apr. 17, 2001) (UNPUBLISHED).
Otter Tail County, Judge Thomas M. Stringer

A trial court's denial of an OFP will only be overturned if it is "clearly erroneous." The wife petitioned the court for an issuance of an OFP against her husband. The trial court refused to grant the order because the husband had not harmed the wife in the six months since he had returned home from chemical dependency treatment. Additionally, the trial court found that there had been no threats of abuse since the husband's return from treatment. Although the wife claimed that she often left the house and spent the night in another place to avoid abuse and that her husband had started drinking again, the trial court did not find cause to grant the order. The appellate court affirmed the denial of the OFP, stating that the trial court is in "the best position to decide the credibility of the witnesses" and thus the decision was not "clearly erroneous."

In re Hudson, A13-0283 (Minn. Ct. App. Aug. 26, 2013) (UNPUBLISHED).
Olmsted County

Father filed an *ex parte* affidavit alleging that his daughter gave different explanations for a black eye that conflicted with the explanation from mother. The district court granted the *ex parte* OFP and appointed a guardian *ad litem* (GAL). The district court held an OFP hearing, at which it granted the father's petition for the OFP and stated on the record that it believed that mother exposed the child to someone who gave her the black eye, but did not give the child the black eye. Mother appealed. The Court of Appeals held that the district court had jurisdiction to issue the OFP because any family or household member may file an OFP petition. However, the district court abused its discretion by granting the OFP, because the petitioner must demonstrate harm on the part of the responding party, not simply that domestic abuse occurred in the home. There was not a record that the mother abused the child or that she inflicted "fear of imminent physical harm, bodily injury or assault". Minn. Stat. § 518B.01, subd. 2(a)(2). The Court was concerned that the district court's determination that mother committed domestic abuse against the child because she allowed her boyfriend to be around the child would extend the statutory framework further than the framework permits.

Hughs v. Cole, 572 N.W.2d 747 (Minn. Ct. App. 1997).
Wright County, no judge reported

Hughs moved to Minnesota with her son after she and Cole had ended their relationship. Cole lived in Pennsylvania. Hughs filed for and was granted an OFP on behalf of her son due to physical abuse of the son while he visited Cole in Pennsylvania. Cole appealed, claiming the court did not have personal jurisdiction over him and arguing there was insufficient evidence to support the finding of domestic abuse.

Cole had never lived in Minnesota, did not own property in Minnesota, did not transact business in Minnesota and had never visited Minnesota. The appellate court said the presence of the minor child in Minnesota and the fact that the boy suffered emotional distress in Minnesota due to the father's acts committed in Pennsylvania was sufficient for the court to assert personal jurisdiction over Cole. Cole's telephone calls to his son in Minnesota and the fact that the son was a minor were enough to satisfy the minimum contacts requirements.

Hughs presented some evidence of physical abuse and fear of imminent harm. Cole presented no evidence to refute Hughs' claims. There was sufficient evidence to support the finding of domestic abuse.

J

J.E.P. v. J.C.P., 432 N.W.2d 483 (Minn. Ct. App. 1988).
Washington County, Judge John Cass

The trial court must appoint a guardian *ad litem* (GAL) to look after the best interests of the child after testimony alleging the child was a victim of abuse. The district court granted the mother an OFP, after she said she feared her husband was sexually abusing their daughter. After the allegations of abuse were dismissed, the court modified the OFP to allow unsupervised, liberal visitation between the father and his children. The district court erred by not appointing a GAL during the proceedings.

J.O. ex. rel. C.O. v. P.O., No. C3-00-1213 (Minn. Ct. App. Feb. 27, 2001) (UNPUBLISHED).

Crow Wing County, no judge reported

The trial court issued an OFP against respondent P.O. P.O. appealed, alleging that the court inappropriately denied his continuance request, that the domestic abuse findings were inadequate and that there was not enough evidence to justify an order for two years. P.O. had requested a continuance because his attorney was not at the hearing. The court denied the continuance. J.O. also did not have an attorney and gave testimony about incidents where P.O. physically and verbally abused her and her child. The court awarded J.O. sole physical and legal custody with supervised visitation for P.O. and issued a two year OFP.

The Court of Appeals upheld the issuance of the OFP. The court explained that the trial court could not grant the husband's request for a continuance because when a hearing is requested by the person seeking the OFP, it must be set "not later than seven days from the issuance of the ex parte order." A continuance can be granted if the person whom the OFP is sought against was served less than five days before the hearing. Here, P.O. was served five days before the hearing, which gave him no basis for a continuance. Additionally, the court found that the district court had made adequate findings and that there was sufficient evidence to support the issuance of the OFP. Finally, the court determined that, although Minnesota Statue § 518B.01, subd. 6(b) states that an OFP should not exceed one year "except when the court determines a longer fixed period is appropriate," there is no requirement for the court to make specific findings on this issue.

Johnsen v. Johnsen, No. C1-01-362 (Minn. Ct. App. Oct. 30, 2001) (UNPUBLISHED).
Ramsey County, Judge Charles A. Flinn, Jr.

Johnsen filed a petition and amended petition on behalf of her minor children. In Johnsen's petition, she alleged that she and the children were threatened and that respondent Johnsen sexually abused the children. The court denied the OFP. The mother of the children presented a deposition of a therapist who held the opinion that the respondent had sexually abused the older child. The court held that the trial court is entitled to reject the therapist's opinion in favor of other evidence. Additionally, the mother raised the claim that the court failed to appoint a guardian *ad litem* (GAL) and conduct an evidentiary hearing. The court found evidence that a GAL had been appointed, but that no other action was taken. The record failed to account for this fact. The court found no basis for reversible error for failure to appoint a GAL. The Court of Appeals upheld the trial court's denial of the OFP, stating that the court's reliance on other evidence independently supports its ultimate decision to deny the petition.

Johnson v. Humfeld, No. C9-98-2073 (Minn. Ct. App. May 18 1999) (UNPUBLISHED).
Houston County, Judge Duane Peterson

The father petitioned for an OFP against the mother. The court issued the OFP and gave the father temporary custody of the child. The couple has never been married and the father's paternity has never been established in a court proceeding. The father had not been adjudicated, but both parties signed a Wisconsin Statement of Paternity under oath declaring him the father. The father also took the child into his home and treated her as his child. Furthermore, the father was named on the birth certificate. These three factors created a presumption that he is the child's father. The law provides that the mother has sole custody until paternity is established. If the father can offer proof that he is entitled to one of the statutory presumptions of paternity, then the court can award custody. The trial court found that the child's safety required that temporary custody be granted to the father, but

failed to make any findings on the child's best interests. Findings on the statutory factors are required when a custody award is made in a domestic abuse proceeding and custody is disputed. The appellate court ordered that the child stay in the father's custody until the statutory factors were addressed.

Johnson v. Johnson, No. A14-0315 (Minn. Ct. App. October 6, 2014) (UNPUBLISHED).
Dodge County, no judge reported

Husband is entitled to a hearing on an OFP issued under the Domestic Abuse Act. Husband's argument that he did not receive a full hearing fails because he had the opportunity to present additional evidence and cross-examine respondent.

In order to obtain a subsequent OFP, a petitioner only needs to show reasonable fear of physical harm. Husband engaged in domestic abuse against wife and her children in the past, as established by the earlier OFPs, and began exhibiting similar behavior in the months leading up to the current OFP petition. Because the district court implicitly found wife more credible, she had two previous OFPs against husband, and the evidence supported an implicit finding that wife had a reasonable fear of harm, the district court did not abuse its discretion by granting the subsequent OFP on behalf of her and her children.

Johnson v. Johnson, 726 N.W.2d 516 (Minn. Ct. App. 2007).
St. Louis County, Judge Mark A. Munger

Appellant's OFP was denied, and in later dissolution proceedings her husband made an oral request that Petitioner pay for the attorney fees associated with him having to defend against the OFP that was ultimately dismissed, which the court granted. These fees were awarded under Minn. Stat. §549.211 (2004) and Minn. R. Civ. P. 11, which allow a party to recover money expended to defend against "unsubstantiated and unfounded allegations." Both provide that the motioning party must follow a procedure called the "safe-harbor" rule. This gives the opposing party 21 days to respond to the motion for attorney's fees, and to correct any improper papers and generally to rectify the situation. Motions made under these provisions need to be brought as soon as possible. The Respondent did not request attorney fees under the provisions until well after the OFP proceedings were finished. The request, therefore, did not "advance the purpose of deterrence under the statute and rule." The order was reversed.

Johnson v. Johnson, No. A03-1436 (Minn. Ct. App. June 1, 2004) (UNPUBLISHED).
Scott County, Judge Michael Young

Wife filed for an OFP against husband after husband was arrested for fifth degree domestic assault. The next day, husband filed for an OFP against wife, claiming that she threatened to kill him and that she abused their child. At the hearing, husband's attorney attempted to introduce the results of a polygraph examination, clearly contrary to the Minnesota Supreme Court's unequivocal holding that such evidence is inadmissible as a matter of law. *State v. Opsahl,* 513 N.W.2d 249, 253 (Minn. 1994). The district court refused to admit the polygraph results, granted wife's OFP, and denied husband's OFP. Husband appealed. The appellate court held that the district court properly excluded the polygraph evidence and affirmed its issuance of wife's OFP.

Jones-Albert v. Albert, No. A04-395 (Minn. Ct. App. Nov. 9, 2004) (UNPUBLISHED).

Hennepin County, Judge George F. McGunnigle

Respondent-mother, Jones-Albert, petitioned for an OFP against the children's father, appellant-Albert. A family court referee granted Jones-Albert an OFP against Albert, finding that she feared imminent physical harm from him. Albert also petitioned for an OFP against Jones-Albert. The referee granted him an OFP, in which the referee vacated the child support award in Jones-Albert's OFP. After the orders were granted, the district court ordered a dissolution judgment and decree, granting Jones-Albert permanent custody of the parties' children. Albert appealed the district court's decision to grant Jones-Albert an OFP.

Albert argued that the referee lacked subject-matter jurisdiction to award custody of the parties' children in the OFP proceeding because custody was simultaneously at issue in the dissolution action. The Court of Appeals disagreed, stating that Minn. Stat. § 518B.01, subd. 4(d) (2002) states that a domestic abuse OFP may be granted, regardless of whether there is a pending action between the parties. Therefore, the existence of a simultaneously pending dissolution action does not preclude a domestic abuse OFP from addressing custody matters.

Albert also argued that he is entitled to district court review of Jones-Albert's OFP. Assuming that Albert was improperly denied district court review of the referee's OFP decision, the Court of Appeals declined to remand because review of this record, which includes evidence that Albert pushed Jones-Albert and threatened to kill her and himself, made it clear that district court review of Jones-Albert's OFP would yield the same result.

K

Kahler v. Lange, No. A10-2009 (Minn. Ct. App. July 5, 2011) (UNPUBLISHED).
Benton County, no judge reported

Respondent-mother obtained an emergency ex parte OFP after she alleged appellant-father violated the parenting time order by attending their sons' soccer game. At the OFP hearing, respondent testified appellant's behavior at the soccer game made her fear for her safety and her son's. She also testified about several incidences of abuse throughout their marriage. Appellant admitted to attending the game but denied using threatening gestures or words. On cross-examination, appellant's credibility was impeached when he admitted to not being honest with Stearns County District Court in the past. Based on the testimony and evidence on the record, the district court issued a two-year OFP. The court of appeals upheld the district court's issuance of the OFP because appellant's threatening behavior at the soccer game was enough to inflict fear of imminent physical harm on respondent. The court of appeals noted imminent fear may be caused by verbal abuse and need not be caused by physical aggression.

Kalamaha v. Kalamaha, No. A03-2030 (Minn. Ct. App. Sept. 28, 2004) (UNPUBLISHED).
Hennepin County, Referee Susan Fallek Rogers

In this appeal from a domestic abuse OFP, appellant Kory Surgay Kalamaha argued there was insufficient evidence to show either that respondent Angie Dubbs Kalamaha suffered physical harm or that appellant intended to put respondent in fear of imminent physical harm. The district court found that appellant inflicted physical harm upon respondent. In contrast, the Court of Appeals found that pursuant to Minnesota law, a petitioner for an OFP must make specific allegations of

domestic abuse. The appellate court noted that respondent only alleged that appellant grabbed her arm and held it. Further, respondent never alleged she suffered from any resulting physical injuries. Accordingly, actual physical harm could not support issuance of an OFP.

There was, however, sufficient evidence of fear of imminent physical harm. From appellant's actions, the court could infer intent to cause harm. Also, the facts sufficiently demonstrated that a reasonable person in respondent's position would be in fear of imminent physical harm. On these grounds, the Court of Appeals affirmed the district court's decision to grant the OFP.

Kass v. Kass, 355 N.W.2d 335 (Minn. Ct. App. 1984).
Wright County, Judge Kim R. Johnson

An OFP is not justified upon seeing the abuser on a public street for the first time in four years. A showing of either present harm or an intention on the part of the abuser to do present harm is required. Wife filed for an OFP after she thought she saw her ex-husband driving behind her. Wife had moved from her previous residence in fear of him. The district court erroneously issued the OFP, because there was no infliction of fear of imminent physical harm. The district court properly denied costs to ex-husband because there was no showing of bad faith.

In Thompson v. Schrimsher*, 906 N.W.2d 495 (Minn. 2018), the Supreme Court of Minnesota ruled that the interpretation of "domestic abuse" in Kass was erroneous and stated the following: "The court's erroneous interpretation of 'domestic abuse' was based on the rule it has articulated in Kass v. Kass, 355 N.W.2d 335 (Minn. App. 1984). In Kass, the court interrupted the 'domestic abuse' to 'require either a showing of present harm, or an intention on the part of appellant to do present harm.' This interpretation was incorrect, as it borrowed the word 'imminent' from subdivision 2(a)(2) and inserted it into subdivision 2(a)(1)'s definition of 'domestic abuse.'" Thus, the Supreme Court concluded that a temporal requirement is only required in Minn. Stat. 518B.01, subd. (2)(a)(2), not subd. 2(a)(1), and a petition for an OFP requires only a showing of past domestic abuse.*

Karasek v. Karasek, No. A08-0643 (Minn. Ct. App. March 24, 2009) (UNPUBLISHED).
Hennepin County, no judge reported

The district court did not abuse its discretion when it granted an OFP because sufficient evidence existed to establish domestic abuse. The parties were divorced with one son. When the father came to pick up his son, the mother informed the father that she had become pregnant through a relationship with another man. The mother testified that the father became enraged, criticized her, screamed at her, and "came at me, puffed his chest out and asked me if I wanted to go, as if I wanted to fight him." The court concluded that the district court's finding that domestic abuse occurred is supported by evidence that the father threatened the mother in a confrontation and with telephone calls, as well as evidence that the mother actually feared the father because of his conduct. The evidence was therefore sufficient to satisfy the statutory requirement of "fear of imminent physical harm, bodily injury, or assault."

Kepler v. Kepler, No. C5-94-1557 (Minn. Ct. App. Feb. 21, 1995) (UNPUBLISHED).
Hennepin County, Judge Franklin Knoll

The petitioner sought an OFP based on two threatening phone calls. The petitioner's attorney served respondent with a notice of filing of the order prior to the actual filing of the OFP by the court. Respondent appealed. The premature notice of filing does not limit the time for appeal. The time for appeal begins to run with the actual filing of the order by the court, not by the notice served prematurely by petitioner's attorney.

At the hearing, respondent tried to introduce an audio tape of one of the phone calls. The trial court excluded the tape, saying it was unreliable. The appellate court found the tape to be directly relevant to the OFP hearing. The trial court did not allow the respondent an opportunity to prove the authenticity of the tape. The trial court, in determining the reliability of relevant evidence, must allow a party to present information on the authenticity of the evidence. The case was remanded.

Ketchmark vs. Fruen, No. A16-1450 (Minn. Ct. App. May 15, 2017) (UNPUBLISHED).
Hennepin County

Appellant Fruen and Respondent Ketchmark are the father and mother, respectively, of a minor child with whom they each share custody. On the night in question, Ketchmark went to Fruen's residence to pick up the child, and Fruen told her multiple times to leave. When she did not, Fruen hit her several times, forced her off of his porch, and walked her to her car, where Ketchmark testified that he threw her against the car. Ketchmark asked the court for an emergency *ex parte* OFP for herself and the parties' child. The district court granted the OFP for Ketchmark, but not for the minor child. The district court found Ketchmark credible in her testimony, and referred in their decision to text messages from Fruen to Ketchmark where he insults her, and makes threats to "destroy her life". However, these text messages never made it into the record, so the Court of Appeals found that these texts as evidence of fear of physical harm cannot be the basis for the OFP. To attempt to find alternative grounds to justify the OFP, the Court of Appeals looked to the district court's decision, but could not determine whether the district court found that physical abuse occurred, only what Ketchmark testified, but they made no credibility finding for Fruen's denial of physical harm. Reversed and remanded.

Khangsar v. Zrust, No. A08-1457 (Minn. Ct. App. May 19, 2009) (UNPUBLISHED).
Hennepin County, no judge reported

A wife's testimony that her husband threatened to kill her and that his ongoing conduct caused her fear was sufficient to support a finding that the husband committed domestic abuse and to justify the issuance of an OFP. Although the husband denied the allegations of abuse, the court was free to find the wife's testimony more credible. The district court also did not abuse its discretion in using a non-certified interpreter. There was a lack of Tibetan interpreters, both the court and appellant's attorney questioned the interpreter, and the record reflects that the interpreter was qualified to interpret the proceedings. The district court also did not abuse its discretion by assuming the role of advocate by cross-examining appellant. Appellant failed to object to the questioning and thus forfeited his right to appeal the issue.

Kimmel v. Kimmel, 382 N.W.2d 266, op. with, 392 N.W.2d 904 (Minn. Ct. App. 1986).
Ramsey County, Judge E. Thomas Brennan

The trial court has use of broad equitable powers when awarding emergency custody. After their divorce, mother initiated an OFP proceeding against her ex-husband for protection of herself and her children, including her nine-year-old son from a prior marriage. The district court granted the OFP, granting stepfather supervised visitation. During the second hearing, custody of the son was awarded to Human Services for placement with the boy's natural father. The trial court did not abuse its discretion in the award. Social workers testified that the mother defied the OFP by allowing the stepfather to baby-sit the children and stay in the home. Stepfather had thrown the boy against the wall, pulled his hair, and put the boy's foot into a 24-inch fan blade. Mother was not notified that the second hearing was to address son's custody, rather just the daughter's visitation with her natural father. The court's custody award to the father was supported by a history of physical abuse, and the son's poor school performance, behavioral problems, and lack of personal hygiene while in the mother's custody. Testimony also showed that son improved in school while in the father's custody.

***Klammer v. Klammer*, No. A15-0922 (Minn. Ct. App. January 25, 2016) (UNPUBLIHSED)**
Brown County, no judge reported

An ex parte OFP was issued on behalf of the respondent, and at a separate hearing the district court issued an order granting custody of the children to respondent and supervised parenting time to appellate. During the appeal, appellant argued that the district court abused its discretion by issuing an OFP for the children without a finding that they were victims of domestic abuse. The Court of Appeals cited Schmidt ex rel. P.M.S. v. Coons, stating that the Minnesota Domestic Abuse Act does not permit an OFP to be issued on behalf of a minor child in the absence of a finding that the child was a victim of domestic abuse. Since the district court did not find that the children were victims of domestic abuse and since appellant agreed only to the OFP for petitioner, the Court of Appeals ruled that the court abused its discretion by issuing an OFP for the children. The Court of Appeals reversed and remanded.

Appellant also argued that the district court abused its discretion by failing to limit the modification of custody and parenting time to a period of two years. The Court of Appeals cited the Domestic Abuse Act (Minn. Stat. § 518B.01), which states that an OFP cannot exceed two years unless the court determines a longer time is appropriate. Since the district court did not specify an expiration or determine a period longer than two years was appropriate, the Court of Appeals reversed and remanded for further proceedings.

Knapp v. Knapp, No. C4-96-2400 (Minn. Ct. App. Mar. 18, 1997) (UNPUBLISHED).
Hennepin County, Judge Mary Davidson

Recommended findings and orders of a family court referee in custody matters are only advisory and possess no more than prima facie validity. The family court judge has the duty and retains the ultimate responsibility to make an informed and independent decision. Further, the judge has full authority to adopt the recommendations, modify or reject them, recommit the referee with instructions, or receive further evidence. The wife petitioned for an OFP, alleging domestic abuse. The judge issued an ex parte temporary OFP. After an evidentiary hearing, a family court referee issued an OFP. On review, the district court judge granted husband's request to consider additional evidence, and concluded the record did not support a finding of domestic abuse. Taking the evidence in light most favorable to the district court's findings, and giving deference to its credibility

determinations, the appellate court found that the district court did not clearly abuse its discretion by not following the referee's finding that domestic abuse had occurred.

Knight v. Knight, No. A13-2288 (Minn. Ct. App. July 28, 2014) (UNPUBLISHED).
Carver County, no judge reported

The Carver County District Court issued an OFP on behalf of respondent Maria Knight against appellant James Knight. Before issuing the OFP, the Carver County Judge called the Hennepin County Judge who had presided over the parties' marital-dissolution to determine who had proper venue. There was no indication that any substantive matters were discussed between the judges. At the OFP hearing, neither parties' counsel objected to the telephone call or requested to be included on the phone call. Minn. Code Jud. Conduct explicitly recognizes that "a judge may consult with other judges on pending matters, but must avoid *ex parte* discussions of a case with judges who have previously been disqualified… and with judges who have appellate jurisdiction over the matter." Minn. Code Jud. Conduct Rule 2.9 cmt. 5. Neither applied to the Hennepin County Judge. The Court of Appeals concluded the district court judge did not violate the rules of judicial conduct. Evidence supported a finding of domestic abuse and the OFP was properly granted.

Knuth v. Knuth, No. C1-92-482 (Minn. Ct. App. June 30, 1992) (UNPUBLISHED).
Dakota County, Judge John J. Daly

The Domestic Abuse Act has been interpreted as requiring some overt action indicating present intent to do harm or cause fear of imminent harm if there is no actual physical assault. However, an overt physical act is not required to support issuance of a protective order. Although not dispositive, past abusive behavior is a factor in determining cause for an OFP. Husband appealed the extension of an OFP, alleging insufficient evidence. The district court had ample evidence. The wife testified that husband moved within two blocks of her home and she has seen him outside the family home on his bike. Her mail had been opened and nails pounded into the sides of her tires. This evidence, coupled with evidence of past abuse, supported the issuance of an OFP extension.

Kopylov v. Kopylov, **A15-0079 (Minn. Ct. App. August 31, 2015) (UNPUBLISHED)**
Scott County, no judge reported
In December 2014, respondent petitioned the court for an OFP, alleging that Tatiana had repeatedly physically abused and threatened him. Following a hearing, the district court issued an OFP finding that Stanislav showed that appellant repeatedly attacked him for a period of roughly six months. On appeal, appellant argued that the evidence was insufficient to support the issuance of an OFP. Specifically, appellant argued that there was no evidence showing that she had present intent to inflict fear of imminent harm on respondent, relying on Kass v. Kass, 355 N.W.2d 335.

The Court of Appeals held that there was no clear error in the district court's findings that included the intent necessary to support the issuance of an OFP. Because the district court did not abuse its discretion by granting the OFP, the Court of Appeals had no reason to reverse the decision. (The Court of Appeals does not reconcile conflicting evidence or determine witness credibility.) The Court also distinguished this case from Kass, finding in the present case that the totality of the circumstances were sufficient to find that Tatiana had present intent to cause Stanislav fear of imminent physical harm. For these reasons, the Court of Appeals affirmed.

In the matter of: Tamara Lynn Kriesel, No. A17-0117 (Minn. Ct. App. Sept. 25, 2017) (UNPUBLISHED).
Isanti County, no judge reported

The court granted an ex parte OFP prohibiting Michael Rossman from contacting Tamara Kriesel and her children. The order informed Rossman that the district court would hold a hearing deciding whether to grant the relief requested in the order. The order required that Rossman "appear personally and respond." However, during the subsequent hearing, the court did not allow Rossman an adequate opportunity to respond to the petition. The district court also did not allow Kriesel to present additional evidence concerning the abuse. Because Rossman was not given an opportunity to defend the allegations at the hearing, the order from the district court was reversed.

Kronebusch v. Kronebusch, No. A04-429 (Minn. Ct. App. Dec. 28, 2004) (UNPUBLISHED).
Winona County, Judge Jeffrey D. Thompson

Daniel Kronebusch field for an OFP on behalf of himself, his wife, and their children against his brother, John Kronebusch, alleging verbal and physical abuse. The district court specifically found that on two occasions John Kronebusch assaulted Daniel Kronebusch, therefore the findings were sufficient to support the OFP as it relates to Daniel Kronebusch. But, there was no evidence in the record that John Kronebusch caused physical harm to, or had a present intent to cause fear of physical harm, on the part of any of Daniel Kronebusch's family members. Therefore, because there were no findings or record evidence to support findings of acts of domestic abuse by John Kronebusch against Daniel Kronebusch's family members, the Court of Appeals found that the district court abused its discretion by issuing the OFP as it relates to Debra Kronebusch, Timothy Kronebusch, and Justin Kronebusch.

***Kysylyczyn v. Kysylyczyn*,** No. A09-273 (Minn. Ct. App. Oct. 20, 2009) (UNPUBLISHED).
Ramsey County, no judge reported

On appeal, appellant argued the district court's findings lacked evidentiary support because respondent admitted, on cross-examination, she has no memory of the events giving rise to the bruising and argued respondent's injury was caused by an accident rather than intentional conduct. The appellate court found the district court did not abuse its discretion in issuing an OFP, as the record supported the district court's findings of both physical harm and a threat of imminent physical harm. Such evidence in the record that was relied upon by the district court included respondent and respondent's mother's testimony, and the bruising on respondent's arm which resulted from the husband bumping her forcefully into a door frame. Further, the court rejected appellant's assertion the absence of a criminal prosecution indicated that no domestic abuse occurred. Thus, based on the totality of the circumstances, the district court's conclusion domestic abuse occurred was reasonable.

L

In re Children of L.D., No. A04-1187 (Minn. Ct. App. Feb. 1, 2005) (UNPUBLISHED).
Hennepin County, Judge Kathryn L. Quaintance

Appellant L.D. challenged the termination of her parental rights of her two children by claiming that the juvenile court's erroneous evidentiary rulings deprived her of a fair trial and that the order terminating her parental rights is not supported by clear and convincing admissible evidence. L.D. objected to the admission of court orders denying her petitions for an OFP, together with the attached petitions, on the basis of hearsay and relevance. The court found that the documents were properly admitted. Orders for protection are not hearsay under Minn. R. Evid. 801(d)(2) because a statement is not hearsay if it is offered against a party and is the party's own statement. From the record, it appeared that the purpose was to show L.D.'s representations to the district court, which resulted in the court's denial of the petition, and not for the truth of what is asserted in the petitions. Therefore, the Court of Appeals found that the evidence was not hearsay and was properly admitted.

Lee v. Lee, No. C7-99-1269 (Minn. Ct. App. Feb. 1, 2000) (UNPUBLISHED).
Carver County, Judge Thomas B. Poc

As part of a divorce decree, the court extended an OFP. The husband appealed. He claimed, among other issues, that the extension of the OFP was done in error. The appellate court said the standard for issuing an extension requires the petitioner to be reasonably in fear of physical harm. For an OFP extension, there is no requirement that the petitioner show that the physical harm is imminent.

In the Matter of Joanne Lynn Kargel Lund vs. Michael Alan Lund, No. A17-0439 (Minn. Ct. App. Nov. 27, 2017) (UNPUBLISHED).
Hennepin County, no judge reported

The district court did not abuse its discretion by denying to hear Appellant's witness testimony because the information sought was regarding events they were not present for, and therefore, irrelevant. Further, Appellant was given an adequate hearing because he had the opportunity to cross-examine Respondent, testify, or make offers of proof regarding the events. Second, the district court made a reasonable determination that Respondent was reasonably in fear of Appellant through testimony of Appellant's past violent actions and current behavior.

M

***Martin v. Freundl*,** No. A16-0387 (Minn. Ct. App. Dec. 5, 2016) (UNPUBLISHED).
Blue Earth County

Appellant Freundl and Respondent Martin have been co-parenting since 2015. In late 2016, when the kids were staying with Freundl, he sent Martin threatening text messages, swearing the children would rather be with him. Martin arrived at Freundl's house with a police escort, where Freundl threatened to kill Martin and the police. Martin received an *ex parte* OFP, and after an evidentiary hearing, was granted a two-year OFP for herself and her children. Freundl appealed, arguing that the evidence was insufficient to support the OFP. The Court of Appeals found the police report, complaint, and 9-1-1 transcript, as well as the threatening text messages to Martin sufficient evidence of domestic abuse. However, nothing in the record showed a threat of harm to the children, or any fear of bodily harm. OFP for Martin affirmed, OFP for the children reversed.

Martin v. Martin, No. C5-97-360 (Minn. Ct. App. Aug. 19, 1997) (UNPUBLISHED).
Dakota County, Judge Edward I. Lynch

Uninvited visits and failing to leave when requested may constitute domestic abuse. Respondent claimed the petitioner presented no evidence of domestic abuse, or "infliction of fear of imminent physical harm, bodily injury, or assault." The court ruled that an act does not have to be physical to support an OFP.

McIntosh v. McIntosh, 740 N.W.2d 1 (Minn. Ct. App. 2007).
Washington County, Judges B. William Ekstrum and Stephen L. Muehlberg

Marjorie McIntosh obtained an OFP against her husband Kenneth after he stipulated to the order; Marjorie subsequently obtained two extensions. Kenneth appealed the second extension, arguing the district court should not have extended the OFP absent a showing of the existence of domestic abuse and the evidence was insufficient to support the extension. The court held Kenneth's stipulation to the original OFP freed the district court from having to make the otherwise necessary finding of domestic abuse. Further, the court held the plain language of Minn. Stat. § 518B.01, subd. 6(a) did not require a finding of domestic abuse for an extension of an existing OFP. Additionally, the court held the evidence was sufficient to support the OFP extension because Marjorie's application alleged two OFP violations and she claimed she was afraid of physical harm from Kenneth. The court reasoned her application and testimony supported the finding she was afraid of physical harm from Kenneth, justifying the OFP extension.

McIntyre v. McIntyre, No. A05-1211 (Minn. Ct. App. May 16, 2006) (UNPUBLISHED).
Hennepin County, Judge Thorwald H. Anderson

Great deference is given to findings of fact made by the district court. The district court issued a temporary ex parte OFP for the wife and three children and scheduled an evidentiary hearing. Prior to the hearing, the husband consented to the OFP for his wife, but contested the OFP for his children. After determining the wife's testimony of domestic abuse was credible, the district court made findings of spousal abuse, but not child abuse. Concerned the formal findings would prove prejudicial in marriage-dissolution proceedings, the husband argued the formal findings of spousal abuse were not necessary, as he had consented to the OFP. However, because the husband contested the OFP regarding his children, the district court had to conduct a full evidentiary hearing. The court welcomed the formal findings of the district court, noting that such findings are overturned only if clearly erroneous.

McSparron-Kannenberg v. Kannenberg, No. C1-98-88 (Minn. Ct. App. June 23, 1998) (UNPUBLISHED).
Hennepin County, Judge Mary Lisbeth Davidson

If an attorney does not show up for an OFP hearing, the decision stands unless the non-represented party can show there was prejudice. The district court granted McSparron-Kannenberg a year extension on an OFP. Unrepresented, Kannenberg objected to the extension and alleged an abuse of discretion when the referee refused a continuance. Because Kannenberg could not show prejudice, the appellate court upheld the extension.

Mechtel v. Mechtel, 528 N.W.2d 916 (Minn. Ct. App. 1995).
Houston County, Judge Clement H. Snyder, Jr.

When there is probable cause that one party physically abused the other party, the court shall not require the parties to participate in mediation or any other process that requires the parties to meet and confer without counsel. Appellant filed for an OFP against her husband, alleging that she feared the respondent's rage since he had stopped taking medication and receiving psychiatric care for his manic depression. The district court ordered an ex parte OFP. At the hearing, the court did not take any testimony or ask about the domestic abuse. The district court erred in issuing a mutual restraining order because respondent did not ask for the order or produce evidence of abuse by the appellant, and the appellant voiced her opposition to the order twice. The district court also failed to provide a "full hearing" by not even inquiring into the truth of the abuse allegations in the petition, making no written or oral findings, and not filling out the proper OFP forms.

Miller v. Rathbun, No. C8-99-938 (Minn. Ct. App. Jan. 4, 2000) (UNPUBLISHED).
Ramsey County, Referee Charles H. Williams, Jr.

Petitioner and respondent lived together for approximately three years. On January 21, 1999, petitioner filed for an OFP, alleging that on December 20, 1998, respondent hit her face on the frame of a waterbed, causing bleeding, bruising, and numbness. The district court issued the OFP against respondent on February 5, 1999. On June 1, 1999 petitioner produced an affidavit recanting her prior testimony. Following this, respondent requested that the OFP be dismissed and an evidentiary hearing be granted. The court denied these motions. Respondent appealed on three separate grounds.

First, respondent argued that the OFP should be dismissed in view of Miller's June 1, 1999 affidavit. The court ruled that the OFP is enforceable because the June 1 affidavit is dated after the February 5 order; thus, it is not part of the record on appeal.

Second, respondent argued that there was insufficient evidence to support the finding that domestic abuse occurred. The court ruled that the trial court's findings of fact will not be set aside unless they are clearly wrong. The facts supported a finding of domestic abuse.

Third, respondent argued that the court erred in denying his motion for a new trial. The appellate court ruled a party is not allowed to appeal a new-trial motion in a domestic-abuse proceeding.

Miu v. Miu, No. CX-98-1384 (Minn. Ct. App. Jan. 26, 1999) (UNPUBLISHED).
Hennepin County, Judge Mary E. Steenson

The father challenged an OFP prohibiting him from contact with his adult son. The father claimed the district court did not consider the evidence he presented. The appellate court upheld the OFP. The son and his twin brother identified numerous instances of physical abuse by the father. The son testified that the father had said he had brought the son into the world, and he could take him out of it. The son also testified that the father had spied on him, including lurking outside his home, and the son testified he was "really afraid of this man." The trial court properly assessed the credibility of the parties, including the father's testimony that the "KGB" has a plot "to get him" through his son.

Modeo-Price ex rel. Modeo-Price v. Price, No. A10-1817 (Minn. App. Ct. October 3, 2011) (UNPUBLISHED).
Hennepin County, no judge reported

Respondent-mother obtained an ex parte temporary OFP against appellant on behalf of herself and her children. At the OFP evidentiary hearing, respondent testified regarding domestic abuse by appellant; her testimony was disputed by appellant. The district court issued an OFP based on respondent's testimony which they deemed to be more credible. Appellant challenged the issuance of the OFP claiming there was not intent to inflict fear of imminent physical harm, bodily injury, or assault. The court of appeals disagreed and upheld the district court's finding at least two incidents of abuse had occurred. Further, the district court did not abuse its discretion when it found respondent's testimony to be more credible when based on the record as a whole.

***Mokalla v. Mokalla*, No. A15-1287 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

Mani Mokalla (father) and Kerry Mokalla (mother) have three minor children in common. The district court issued an OFP for mother and two of the three children, but did not address custody or parenting time. Father appealed, arguing that the record did not support a finding that domestic abuse occurred and that the order was inconsistent because it granted an OFP on behalf of only two of the children. Mother argued that the court erred by failing to incorporate an order for custody and parenting time. Father additionally made various arguments about insufficient evidence of his intention to inflict fear or bodily harm on mother and each of the three children.

The Court of Appeals held that considering the totality of the circumstances, the record supports the district court's order on behalf of mother and the two children. The Court was also not persuaded by the argument that the OFP was inconsistent. The Court concluded that the district court did not abuse discretion by not addressing custody or parenting time because the law states that that district court "may" address custody or parenting time; it does not create a requirement. The Court of Appeals affirmed.

Morrissette v. Mrutu, No. A05-2010 (Minn. Ct. App. Aug. 29, 2006) (UNPUBLISHED).
Hennepin County, Judge Thorwald H. Anderson

Petitioner Morrissette requested an extension of her OFP based on violations by Appellant. Petitioner testified that Appellant confronted her in person threatening to kill her, and called her on the phone many times threatening to kill her. Appellant denied the allegations and offered his time card as evidence that he did not confront the Petitioner on that specific day. The district court did not find Appellant's testimony to be credible. As accepted, Petitioner's testimony showed that Appellant did violate the OFP. Therefore, the record supported the district court's findings that Mrutu violated the OFP, and to extend the OFP.

Mosser ex rel. Behnke v. Behnke, No. A05-1166 (Minn. Ct. App. May 23, 2006) (UNPUBLISHED).
Dakota County, Judge Patrice K. Sutherland

Appellant Mosser challenged the district court's denial of an OFP, arguing the district court lacked subject matter jurisdiction because it improperly combined an OFP petition with dissolution proceedings.

At the time of the parties' marriage dissolution in 1997, Mosser alleged Behnke sexually abused their oldest child. However, the allegations were found groundless and a guardian *ad litem* (GAL) and custody evaluator recommended Behnke be awarded custody based on concerns regarding Mosser's mental health. The court nonetheless awarded Mosser sole legal custody, but stated her failure to continue therapy would be perceived as a change in circumstances warranting a reevaluation of custody determinations. In November of 2002, Behnke moved for compensatory visitation, as he had been denied visitation. The district court ordered compensatory visitation for a month and reappointed the former GAL. Because Mosser had refused to treat her mental illness and had moved, pulling the children out of public school, the district court concluded that best-interest factors favored awarding custody to Behnke. The appellate court affirmed.

Mosser then petitioned the district court for an OFP in April of 2005, alleging all four children had disclosed sexual abuse. An ex parte OFP was issued by a judge not involved in the former proceedings. The following day, Behnke appeared ex parte before Judge Sutherland, who had presided over the previous proceedings. Judge Sutherland scheduled an OFP hearing, as she had stipulated previously that all matters concerning these parties were to come before her. The district court subsequently found Mosser had not sustained her burden of proof on the OFP petition. Mosser appealed.

Mosser's argument was that the district court lacked jurisdiction because it failed to follow statutory mandates for consolidation of an OFP and a dissolution proceeding. The appellate court held that procedural requirements have no bearing on the district court's ex parte order. The court stated, "The effect of the ex parte OFP was a modification of custody. In light of the recent custody proceedings on this heavily contested issue, the district court made a practical choice to examine the question in the context of the dissolution action, where custody considerations were thoroughly explored. Based on the statutory language of § 518B.01, subd. 6(c), we conclude that there was no jurisdictional defect."

Mou v. Yang, No. A10-161 (Minn. Ct. App. Dec. 28, 2010) (UNPUBLISHED).
Ramsey County, no judge reported

Respondent-wife Mou obtained an OFP against appellant-husband Yang. Respondent testified appellant dragged her out of their house and made her sit in the cold one night following a confrontation; he abandoned her during a trip to Asia, knowing she did not have a green card or visa with her to get back to America; and threatened to do something "nobody could held her" with. Appellant denied all of the allegations during his testimony, however, the district court found respondent to be more credible. Appellant's procedural due process rights were not infringed because, under the Domestic Abuse Act, a full hearing includes the right to present and cross-examine witnesses, the right to produce documents, and the right to have the case decided on its merits. Appellant had the opportunity to do each of these; his evidence and witnesses were only limited when the district court deemed them irrelevant.

Muckala et al v. Muckala, No. C8-99-1958 (Minn. Ct. App. July 3, 2000) (UNPUBLISHED).
Otter Trail County, Judge Peterson

Dennis, Gary, and Kenneth are brothers. They are involved in the farm corporation, Muckala Farms. Dennis and Muckala Farms petitioned the court for an emergency ex parte OFP against Gary. The petition alleged that Gary had (1) assaulted and made death threats against Dennis in

October 1998; (2) assaulted and made death threats against Kenneth in September 1999 and (3) made several threats to burn down the family farm. The court issued the temporary OFP. At trial, Gary denied assaulting Dennis and contended that Dennis had actually assaulted him. Gary provided a police report stating that Gary had reported that Dennis hit him several times. In addition, Dennis did not testify about the October 1998 incident. The trial court granted Dennis and the Muckala Farms an OFP against Gary for one year. Gary appealed, claiming that there is insufficient evidence to support the district court's finding that domestic abuse occurred. The appellate court found that Dennis and Muckala Farms are afraid of Gary, but the evidence did not show that Gary had harmed them or intended to harm them. The appellate court reversed.

N

***Newton-Denlia v. Newton-Denila*,** No. A17-0250 (Minn. Ct. App. Sept. 11, 2017) (UNPUBLISHED).
Stearns County, no judge reported

Husband shouldered wife into chair at the family home, not allowing her to get up from chair unless she answered his questions about her text messages. He continued shouldering her and cornering her into the living room. Husband eventually pushed wife into wall until she collapsed unable to breath, he then begged their daughter to not call the police. Husband also threatened to kill wife on multiple occasions. OFP was granted by the district court. Husband argued on appeal that the incident did not happen in front of children, so the OFP should be overturned. The appellate court affirmed the OFP based on the wife's testimony of the incident.

Nohner v. Anderson, 446 N.W.2d 202 (Minn. Ct. App. 1989).
Hennepin County, Judge Mary Winter

The trial court may issue an ex parte temporary order, effective for fourteen days. It is authorized to issue an OFP after a full hearing if it makes appropriate specific findings on domestic abuse. The trial court may not continue an ex parte temporary order in effect for over two months. Nohner obtained an ex parte OFP on August 1, 1989, alleging Anderson injured her arm. On August 8, both parties requested an evidentiary hearing. The court took no evidence on the petition and made no findings of domestic abuse. It continued the order "in full force and effect" until an evidentiary hearing on October 18. The trial court erroneously extended the ex parte temporary order. The appellate court issued Anderson's writ of prohibition.

O

Oberg v. Bradley, 868 N.W.2d 62 (Minn. Ct. App. 2015)
Ramsey County, no judge reported

The district court issued an OFP post contested hearing, finding that Bradley had committed domestic abuse against the parties' minor child, that he presents a threat to the child's safety, and that it was in the child's best interest for Oberg to have temporary sole legal and physical custody (with supervised parenting time for Bradley). During the contested hearing, the child's mental health case manager and psychologist testified and were examined by Bradley, who appeared pro se. The hearing was then postponed for two weeks. When the court reconvened, Bradley had not hired counsel and continued to represent himself. The district court confirmed the OFP previously issued by a referee.

Bradley appealed, challenging the OFP, objecting to the inclusion of the minor the child's out of court statements as a violation of his right to due process; claiming that without these statements, the burden of proof required to issue an OFP was not met. The Court of Appeals asserted that neither party suggested the minor child testify, and because Bradley accepted the child's out of court statements as evidence at the hearing, he cannot challenge it now. The Court of Appeals held that the child's out of court statements were not a violation of his due process, that the evidence met the proper standard of proof, and that issuance of an OFP was not an abuse of discretion. The Court of Appeals affirmed.

Ofor v. Ofor, No. A10-2047 (Minn. Ct. App. December 19, 2011) (UNPUBLISHED).
Ramsey County, no judge reported

Respondent-mother obtained an OFP against appellant-father on behalf of herself and their three children. Appellant violated the OFP multiple times by contacting respondent's various family members, requesting they urge respondent to reconcile with him. Respondent contacted police and made them aware of the various violations; after they conducted an investigation, the OFP was extended for another year. In late-2010, respondent petitioned the court for a new fifty-year OFP. The district court issued an OFP for fifty years on behalf of respondent and one for the children for ten years. On appeal, the appellant argued the district court supported the issuance on evidence not included in the record and charges that had been dropped. The court of appeals disagreed and upheld the district court's issuance because it found the district court based the issuance on appellant's prior OFP violations.

Okland v. Okland, No. C0-99-156 (Minn. Ct. App. July 13, 1999) (UNPUBLISHED).
Lake of the Woods County, Judge Peter N. Hemstad

Husband and wife have four children. In August 1996, wife obtained an OFP against husband, limiting him to supervised visitation with the children. In September 1997, the court modified the order, allowing husband unsupervised visitation. Law enforcement officials filed a report that alleged that husband had committed criminal sexual conduct against one of the children. As a result of this report, the court restricted the husband to supervised visitation. Husband appealed, claiming that the court erred by relying on ex parte communication. The appellate court ruled that a court may rely on communication from individuals that are not parties if the accuracy of the information can be readily determined or the information comes from a reliable source.

O'Leary vs. Soukalla, No. A16-1345 (Minn. Ct. App. May 1, 2017) (UNPUBLISHED).
Carlton County

Appellant Soukalla and Respondent O'Leary broke up after almost 20 years in a romantic relationship. After the relationship ended, O'Leary petitioned for an OFP, alleging several incidents of violent domestic abuse against her, previous DANCOs, and previous calls to police regarding domestic violence. The district court awarded the OFP, as well as use of the parties' shared residence, and one half of appellant's 2015 state and federal tax refunds. Soukalla appealed, claiming this order violated Minn. Stat. § 513.075 "anti-palimony" statute, because the parties were never married, and did not have a cohabitation contract. His appeal also included a request to modify the original OFP. The Court of Appeals found that excluding the abusing party from the dwelling the parties share was permissible under Minn. Stat. § 518B.01, subd. 6(a)(2). Also under this statute, the

court may order the abusing party to pay restitution to the petitioner, or any other necessary relief, herein being half of Soukalla's tax refunds. Affirmed.

Olson on behalf of A.C.O. v. Olson*,* 892 N.W.2d 837 (Minn. Ct. App. March 13, 2017).

Respondent Christina Olson filed a petition for an OFP for her minor children against Appellant Bradley Olson. She alleged that her two children told both herself and the children's therapist that Appellant would slap the children, verbally abuse them, and spank them. At the hearing, the Appellant objected to the district court admitting hearsay evidence, specifically any statements made by the therapist or the children. Respondent initially had a letter from the children's therapist, but the letter was ruled inadmissible, yet she still testified about the therapist's statements. Appellant was ordered to have no contact with the children. The Court of Appeals found that the district court erred in relying upon hearsay evidence that does not fit the "residual exception" rule under Minn. R. Evid. 807. They found that Respondent's testimony about her children's statements, as well as statements in her petition and her affidavit constituted inadmissible hearsay, and reversed and remanded the OFP.

Olson v. Olson, No. C7-02-344 (Minn. Ct. App. Sept. 10, 2002) (UNPUBLISHED).
Ramsey County, Judge Willis

Once a Minnesota court makes an initial custody determination, it has exclusive, continuing jurisdiction over the determination under the Uniform Child Custody Jurisdiction & Enforcement Act (UCCJEA) until 1) a court determines that there is no longer a significant connection with this state and substantial evidence is no longer available in this state, or 2) the child and the child's parents do not presently reside in this state. In this case, the Minnesota court made an initial custody decision when the parties divorced. With the court's permission, the father moved to Michigan with the parties' two minor children. The mother remained in Minnesota. During a recent visit, the mother filed for an OFP against the father in Minnesota, for herself and on behalf of both of the children. The Minnesota trial court issued the OFP, granting the mother temporary custody of both children. The father appealed, arguing that Minnesota did not have jurisdiction to make the custody decision because there is a pending custody matter in Michigan, and that he was deprived of a full hearing.

The Court of Appeals affirmed the decision in part, reversed in part, and remanded. The appellate court found that Minnesota did properly exercise jurisdiction over the custody matter, in accordance with the UCCJEA; Minnesota has retained exclusive jurisdiction of the custody matter since the initial custody decision made at the time of the parties' divorce.

The Court of Appeals agreed with the father that he was not given a full hearing within the meaning of the Domestic Abuse Act. At the hearing, the referee terminated the father's examination of the mother and the social worker to whom their son made claims of abuse, finding that the father's questions were not relevant. The father was questioning the mother and social worker about alleged spanking of the son, the mother's reasons for seeking an OFP, and whether the mother coached the son before his visits with the social worker. The Court of Appeals determined that the questioning was critical, and termination of that questioning deprived the father of a full hearing. The case was remanded to the trial court for a full hearing.

Olson v. Olson, No. A05-1417 (Minn. Ct. App. May 16, 2006) (UNPUBLISHED).

Hennepin County, Judge Thorwald H. Anderson

On review, the evidence is viewed in a light most favorable to the findings of the district court. After a full evidentiary hearing, the district court made findings of domestic violence and issued an OFP prohibiting appellant from entering the family home, denying him parenting time, and granting temporary custody to his wife. Appellant claimed that the district court lacked factual support to issue the OFP and that the OFP was contrary to public policy. The court remarked that appellant's statements threatening the life of his wife met the statutory definition of terroristic threats and supported a finding of domestic violence. With regard to the lower court's order concerning custody and parenting time, the appellate court held that the safety of the children is the primary consideration, and that the district court's custody and parenting time determinations can be modified after dissolution proceedings. The court stressed that such matters must be decided in a timely manner so as not to delay domestic abuse proceedings.

***In re the Matter of: Colleen Jea'ne Olson v. Olson*,** No. A17-1176 (Minn. Ct. App. May 21, 2018) (UNPUBLISHED)
Olmsted County, no judge reported

Appellant was granted an ex parte OFP for herself and her minor child against Respondent, and a GAL was appointed. At a review hearing, the district court issued an OFP for Respondent, but dismissed the OFP for the child. The court order made a finding that "the parties have stipulated to dismiss the child from the order for protection." Appellant argues on appeal that this finding was erroneous. The Court agreed that the specific finding of fact was erroneous because no stipulation was found, but the decision to eliminate the OFP for the child was not. Because the district court made an adequate finding in view of the GAL's recommendation that Respondent maintain parenting time, the decision was upheld.
Omar v. Omar, No. A09-2178 (Minn. Ct. App. Aug. 17, 2010) (UNPUBLISHED).
Hennepin County, no judge reported

Appellant Chaltu Omar obtained an OFP against her respondent-husband Bariso Omar without him admitting to committing domestic abuse. The OFP limited appellant's parenting time, prohibited him from committing acts of domestic violence against respondent, and having any contact with respondent. Appellant's request for the OFP to be extended was denied because the district court did not find any intent of violence in an incident where respondent followed appellant. Appellant did not meet the burden of proof with either court because she did not explain how respondent's actions constituted a violation of the OFP.

Omwando v. Nyaboga, No. A13-1327 (Minn. Ct. App. April 21, 2014) (UNPUBLISHED).
Ramsey County, no judge reported

Omwando petitioned the court for an order for protection against Nyaboga, alleging that he had abused her throughout the course of their relationship. After an evidentiary hearing, the district court issued a two-year OFP. The OFP found that acts of domestic abuse had occurred. Nyaboga appealed, challenging the truthfulness of Omwando's testimony, as well as general complaints about her attorney and the district court. The appellate court does not attempt to reconcile conflicting evidence or decide issues of witness credibility, because those issues are for the fact finder. The appellate court also does not review whether the testimony was true or false. A past history of

abusive behavior can be included in the totality of the circumstances that the court uses to infer a present intent to commit domestic abuse. The district court has broad discretion to issue an order that limits access to the a petitioner for an OFP at a variety of places

O'Neil v. O'Neil, No. A13-0296 (Minn. Ct. App. Oct. 21, 2013) (UNPUBLISHED).
Wright County, no judge reported

The district court issued a two-year OFP after an evidentiary hearing, finding that Marty O'Neil had engaged in acts of domestic abuse and Leah O'Neil "is reasonably in fear of physical harm." Marty O'Neil appealed. Marty did not dispute that the prior incidents occurred. Case law provides that intent to inflict fear may be "inferred from the totality of the circumstances, including a history of past abusive behavior." (Quoting *Pechovnik*, 765 N.W.2d 94, 99 (Minn. Ct. App. 2009)). The Court of Appeals determined that Leah's fear was reasonable because the abuse was ongoing, her delay in petitioning for an OFP was due to her fear and that she filed the petition shortly after Marty commenced dissolution proceedings because she expected she would see him in the course of the dissolution proceedings. The district court's reasoning was consistent with the totality of the circumstances approach.

P

Page v. Bostrom, No. C1-00-1856 (Minn. Ct. App. June 19, 2001) (UNPUBLISHED).
Washington County, Judge Elizabeth H. Martin

Page petitioned the court for an OFP against Bostrom. She testified that he had physically assaulted her and her children. Additionally, she testified that he had threatened her and her family and destroyed her property. Bostrom testified that he had not committed any of the acts that Page testified about. The district court believed Page's testimony and issued the OFP. In his appeal, Bostrom asserted that the district court should have believed his testimony over the testimony of Page. The Court of Appeals upheld the OFP, holding that it is the district court's job to assess the credibility of the witnesses.

Paul vs. Wittman, No. A16-1148 (Minn. Ct. App. April 24, 2017) (UNPUBLISHED).
Hennepin County

Appellant Wittman was the uncle of Respondent Paul's boyfriend; the parties lived in the same house, but had no romantic or intimate history. The night in question, Wittman was drunk, and came into Paul's room to apologize for the noise he and his friends had been making. She asked Wittman to leave, but he refused until she hugged him repeatedly. Paul was uncomfortable with this, and Wittman became mad when Paul refused to hug him. Wittman passed out on her floor until one of his friends coaxed him out of the room. Paul called her boyfriend and the police, and left the home and never returned. She petitioned the court for an *ex parte* OFP, and the court granted it. Wittman requested an evidentiary hearing, where the district court found his testimony to be less reliable than Paul's and not credible because he was intoxicated. Wittman appealed, arguing that the OFP was granted in error and that there was no "infliction of fear of imminent physical harm, bodily injury, or assault" upon which the court relied for its granting. The Court of Appeals agreed, there was not sufficient evidence to support that Paul was in fear of imminent physical harm. OFP reversed.

Pavel v. Pavel, No. A15-1937 (Minn. Ct. App. August 8, 2016) (UNPUBLISHED).
Washington County

Appellant mother and respondent father separated in August of 2015, shortly thereafter, father petitioned for an OFP for himself and his children against mother. The children alleged that, when residing at their mother's home, they would be subjected to choking, hitting, and being locked in their bedrooms for extended periods of time. Respondent father took photos of the children's bruises and scratches, as well as photos of claw marks on the inside of the children's bedroom door. He also placed a tape recorder in the home, where it could be clearly heard that one of the children was crying and yelling while locked in his room. Appellant mother claimed that there was no sufficient evidence to claim domestic abuse; the Court of Appeals accepted the father's testimony, the children's testimony, and the photos and recordings that the father submitted as sufficient evidence of domestic abuse. Appellant argued that the district court erred by giving less weight to the GAL's testimony than the photographic evidence; the Court of Appeals found there was no rule mandating the weight a GAL's testimony must hold in an OFP case. OFP affirmed.

Pechovnik v. Pechovnik, 765 N.W.2d 94 (Minn. Ct. App. 2009).
Anoka County, Judge Askew

A case is not moot if collateral consequences may attach to the otherwise moot ruling. Since collateral consequences attach to an OFP under statute, a claim is not moot even if the underlying OFP has expired by the time the court heard oral arguments. First, an OFP may yield collateral consequences in proceedings to extend the OFP and to issue a new OFP. Second, an OFP may yield collateral consequences in martial dissolution proceedings. Finally, an OFP may yield collateral consequences in future custody disputes between the parties. The evidence was sufficient for the district court to infer appellant's present intent to inflict fear of imminent physical harm, bodily injury or assault based on the totality of the circumstances, including appellant's history of abusive behavior.

Pelkey v. Malecha, No. C6-02-2067 (Minn. Ct. App. July 22, 2003) (UNPUBLISHED).
Dakota County, Judge Joseph T. Carter

Pelkey was granted an OFP in 1998 for herself and her son against Malecha. The OFP was extended in 1999 and 2000, but in 2002 the district court refused to extend the order, finding that Pelkey did not show that she was reasonably in fear of Malecha or that Malecha had done anything within the previous year to reasonably place her in fear of him. The appellate court affirmed, holding that the decision to extend an OFP is discretionary and finding that Pelkey did not allege any facts to support her claim that she was reasonably in fear of Malecha.

Pogorelec v. Tank, No. C8-98-2047 (Minn. Ct. App. May 18, 1999) (UNPUBLISHED).
Crow Wing County, Judge Gerald Kalina

Pogorelec filed a petition for a protective order against her ex-boyfriend, Tank. The OFP was based on an incident during which Tank grabbed her arm and yelled about getting back together. He then screamed that she should be committed to a mental institution. The trial court granted the protective order. The appellate court found there was no evidence of physical injury. Grabbing the victim's arm was physical contact, but the contact was not injury. Pogorelec never alleged that physical injury resulted from this contact. Her testimony regarding past confrontations with Tank did not indicate

a history of physical violence or threats of physical violence. It is not reasonable for the court to infer that Tank intended to cause her to fear imminent physical harm by grabbing her arm and yelling to her companion about having her committed. The appellate court reversed the OFP, but noted the behavior might qualify for a harassment restraining order.

Pulk v. Pulk, No. C0-95-729 (Minn. Ct. App. Nov. 21, 1995) (UNPUBLISHED).
Carver County, Judge Robert J. Goggins

Present threats without overt physical acts have been sufficient to support the issuance of a protective order. Wife's testimony regarding husband's acts of repeatedly calling her at work and yelling, together with her statement that it put her in fear of a repetition of prior incidents of abuse, raised the issue of whether husband intended "to inflict fear of imminent physical harm, bodily injury or assault." The trial court erred in stating there was no evidence of present fear, as the husband's calls to wife at her work could potentially support an OFP. The case was remanded.

Q

Quick v. Quick, No. C6-00-167 (Minn. Ct. App. Aug. 1, 2000) (UNPUBLISHED).
Ramsey County, no judge reported

On November 6, 1997, wife asked for and received a temporary restraining order in Wisconsin, which prohibited husband from committing acts of domestic abuse. Husband and wife were divorced and both moved to Minnesota. On November 2, 1999, wife requested an extension of the Wisconsin injunction. Wife stated that prior to the divorce, husband had suffered from serious mental illness, threatened suicide, was hospitalized, and threatened to kill her. Wife testified that husband had a volatile temper and she still feared him. The referee extended the Wisconsin injunction, issuing an OFP based on the finding that wife was reasonably in fear of husband. Husband appealed, claiming that the court did not make sufficient findings to support the extension. The appellate court found that the lower court failed to make findings sufficient to support the extension of the OFP. The appellate court held that a district court is required to provide either written findings, make an oral record of the findings, or note findings in a memorandum accompanying the court's order. The appellate court reversed and remanded.

R

Randall v. Coleman, No. C3-93-851 (Minn. Ct. App. Jan. 4, 1994) (UNPUBLISHED).
Hennepin County, Judge William B. Christensen

Appellant argued on appeal that the district court lacked jurisdiction over him and that the evidence was insufficient to support an OFP. The appellate court noted that personal jurisdiction is a personal right that can be waived. The court then determined that appellant submitted to the court's jurisdiction when he requested and participated in an evidentiary hearing. An appearance in the court for any purpose, other than to question the jurisdiction of the court, is a general appearance allowing the court to exercise jurisdiction over the appearing party.

With regard to the sufficiency of the evidence, the court remarked that "domestic abuse" requires either present harm or an intention to do present harm. The court found that respondent had physically assaulted the petitioner twice, verbally threatened her, caused property damage, and caused her fear of imminent harm. The abusive incidents described by petitioner were only 4 ½

months old at the time of the hearing. To conclude the abuse was too "stale" to support an OFP would make it difficult to issue orders for protection when the hearing is delayed and additional abuse does not occur before the hearing.

Readio v. Readio, No. C4-02-1015 (Minn. Ct. App. May 13, 2003) (UNPUBLISHED).
Scott County, Judge Randall

District courts have broad discretion in deciding whether to award restitution. Wife appealed from dissolution judgment in which the district court denied her request for restitution. Under subd. 6(a)(10) of the Domestic Abuse Act, a court may order an abusing party to pay restitution, including payment for out-of-pocket losses resulting from the crime. In this case, the wife asked for restitution for costs incurred by changing the locks and ordering a court transcript. The district court decided that appellant was not entitled to restitution for the locks because they were changed unnecessarily, or for the transcript because the appellant did not hire an attorney. The Court of Appeals affirmed the decision because there was no evidence that the district court abused its discretion in denying restitution.

State v. Redalen, No. C9-94-945 (Minn. Ct. App. Dec. 27, 1994) (UNPUBLISHED).
Ramsey County, Judge Mary Louise Klas

Redalen appealed a judgment of conviction and a sentence for violating an OFP, arguing that the trial court erred in limiting a proposed defense and giving final instructions away from the bench, and also abused its discretion in awarding restitution.

Redalen was charged with two counts of making harassing phone calls and three counts of violating an OFP obtained by his former girlfriend. Before trial, Redalen moved to dismiss the OFP charges on constitutional and statutory grounds, claiming that he had not received a judge-signed OFP, only a referee-signed order, before the alleged violations occurred. The court determined that the statutory language that the defendant "knows of the order" is a state-of-mind requirement that does not necessitate formal notice. Moreover, Redalen was told that the OFP was effective immediately and had acknowledged in open court that he understood that the OFP prevented him from contacting his former girlfriend. Thus, the court concluded that the trial court did not err in excluding defense evidence or argument pertaining to this issue, or by refusing to instruct the jury as requested.

Redalen also claimed the trial court abused its discretion in awarding restitution to his former girlfriend for psychotherapy and medical treatment, arguing that the state failed to establish a causal connection between the OFP violations and these expenses. The court held that the trial court has broad discretion in awarding reasonable restitution and that restitution is appropriate when the defendant's conduct for which he was convicted directly caused the victim's losses. However, because the State could show by a preponderance of the evidence that only some, but not all, of the medical expenses were related to the OFP violations, the restitution award was reduced.

Reitan v. Reitan, No. C1-98-1242 (Minn. Ct. App. Jan. 19, 1999) (UNPUBLISHED).
Hennepin County, Judge David M. Duffy

In July of 1997, husband and wife agreed to separate, after which the wife changed the locks on the marital home. On July 4, when the husband returned home, he grabbed the wife's wrists, strong-

arming her in an attempt to force a garage door opener from her hands. The two later reconciled, at which point the husband, who had a history of psychological problems, began keeping a gun in the house. In March of 1998, the husband shot off the gun indoors while he was alone in the home. The wife filed for and received an OFP, as the district court considered the July 4 incident one of domestic abuse.

The husband appealed, claiming that the record did not support issuance of an OFP, and that the events in question, which occurred nine months prior, were too remote. The appellate court found that the district court did not abuse its discretion in determining that appellant placed respondent in fear of imminent physical harm. Further, the court distinguished two cases in which incidents supporting an OFP were deemed too remote. In these cases, the events at issue occurred two and four years prior to the OFP. In contrast to a number of years between the domestic abuse and the OFP, the time period in this case was a mere nine months.

Dissent: Because the other incidents alleged by the wife were not proven by the evidence, the trial court did not take those into consideration in granting the OFP. The incident nine months prior to the OFP being issued was too remote to form the basis for an OFP.

Rew v. Bergstrom, 812 N.W.2d 832 (Minn. Ct. App. 2012). December 27, 2011, *aff'd in part, rev'd in part*, 845 N.W.2d 764 (Minn. 2014).
Washington County, no judge reported

Appellant agreed to the issuance of an initial OFP obtained by respondent after eight years of marriage. In the years that followed, respondent obtained several more OFPs against appellant, many of which he violated. In 2010, respondent petitioned the court for a fifty-year OFP based on appellant's prior OFP violations, respondent's fear of physical harm, appellant's stalking behavior, and appellant's recent release from prison for an unrelated incident. The district court determined the statutory requirements for a fifty-year OFP were met and issued the OFP against appellant. The court of appeals determined the fifty-year OFP statute is constitutional because it limits the abuser's ability to contact the abuse victim; it does not limit the message intended to be expressed by the abuser. In addition, appellant's due process rights were not violated because due process does not require a defendant to be given notice of collateral consequences when pleading guilty to an offense. The fifty-year OFP order is not a violation of the double jeopardy clause even though the OFP is based on prior convictions, because the Minnesota Domestic Abuse Act is remedial in nature and was created to protect victims of domestic abuse. Finally, an OFP may be extended without a demonstration of present harm or the intent to do present harm.

Rew v. Bergstrom, 845 N.W.2d 764 (Minn. 2014).
Washington County, no judge reported

The Supreme Court held that to extend an OFP to 50 years, there is no requirement that a district court make a finding that there was domestic abuse. Minn. Stat. § 518B.01, subd. 6(a). An OFP issued for an extended time is constitutional under both the Federal and Minnesota Constitutions, according to the Supreme Court. The Court stated that an OFP issued for up to 50 years does not violate the due process clauses, ex post facto clauses, double jeopardy clauses and is not a violation of the first amendments. The Court remanded for further findings on whether the parts of the OFP that prohibit Bergstrom's contact with his minor children would burden more speech than necessary to serve a significant state interest

Chief Justice Gilda, joined by Justice Dietzen, concurred in part, and dissented in part. The Chief Justice did not think it was necessary to remand the portion pertaining to the children and that the provision in the OFP should have been upheld.

Justice Anderson concurred, saying that a remand is required but only if it is necessary to clarify for the benefit of the parties whether the OFP was issued to protect the children or if it were only a temporary parenting time decision based on the abuse against Rew and for the best interests of the children.

Reynolds v. Pavlov, No. A11-1209 (Minn. Ct. App. April 2, 2012) (UNPUBLISHED).
Anoka County, no judge reported

Harry Reynolds of the Adult Protection Division obtained a ten-year OFP on behalf of Marianne Pavlovski, an 82-year-old woman, against her appellant-son. Reynolds alleged appellant verbal abused his mother on multiple occasions and physically abused her at least once while receiving care at an assisted-living facility. In addition, Reynolds alleged appellant abused his power of attorney privileges by detrimentally controlling her finances, canceling personal-care services, and mismanaging her medications. Even though Pavlovski herself testified in opposition to the petition, the district court found appellant inflicted repeated and persistent verbal and emotional abuse and had abused his mother physically and emotionally. The court of appeals upheld the issuance of the OFP finding the evidentiary record as a whole supported it. However, due to Pavlovski's age they were concerned she would not survive the ten-year order and did not want to potentially hinder the parent-child relationship. It remanded the case to the district court to determine a more appropriate term for the order.

Rigwald v. Rigwald, 423 N.W.2d 701 (Minn. Ct. App. 1988).
Ramsey County, Judge Gordon W. Schumacher

Oral findings of fact are sufficient if recorded in open court. The court specifically found that the wife's actions were not domestic abuse, but that the appellant's actions against the wife and daughter constituted domestic abuse. Therefore, the court made the proper findings to dismiss the husband's petition for an OFP and grant the wife an OFP, child custody, and use of the home. When deciding custody in domestic abuse cases, the trial court has two options. First, it may condition temporary relief to expire on review of the issue in a dissolution proceeding if immediate adjudication is expected. Second, it may decide the issue for an appropriate duration with appropriate consideration and findings on the best interests and safety of the child. Mortgage payments, financial and property interests, except for child support, are properly resolved in the dissolution proceeding.

State v. Riley, No. C6-98-1169 (Minn. Ct. App. Apr. 13, 1999) (UNPUBLISHED).
Isanti County, Judge James E. Dehn

The father appealed, arguing the district court erred by excluding evidence regarding a 1989 petition for an OFP. The father was convicted of sexually abusing his son J.J.R. Based on a prior allegation of abuse, J.J.R.'s mother had filed a petition for an OFP. On the recommendation of J.J.R.'s guardian *ad litem*, the petition was subsequently dismissed when J.J.R.'s therapist found no evidence of sexual abuse. J.J.R.'s mother agreed with the dismissal. The state moved to exclude this

information at trial. The district court excluded the information because the defense failed to disclose the evidence properly, which constituted a discovery violation, and the prejudice from the confusing and misleading nature of the evidence far outweighed any probative value. The appellate court affirmed the trial court's motion, finding that although the petition was dismissed, there was never a finding that the allegations of sexual abuse were false. In addition, J.J.R.'s mother testified that, after the initial report, J.J.R. refused to talk with anyone about the alleged abuse. Because evidence of these prior allegations and the dismissal of the petition could be confusing and misleading to a jury, the appellate court found the district court did not abuse its discretion.

Roberts v. Roberts, No. A10-771 (Minn. Ct. App. Jan. 18, 2011) (UNPUBLISHED).
Ramsey County, no judge reported

Respondent-wife Jean Roberts obtained an OFP against appellant-husband Gabriel Roberts following allegations in her petition appellant had physically abused her and forced her to have sex with him. Appellant primarily contended the district court erred in issuing the OFP because respondent's testimony was not credible. The credibility of a witness is left to the discretion of the district court.

Rotter v. Hansen, No. A06-2315 (Minn. Ct. App. May 20, 2008).
Ramsey County, Judge Roseanne Nathanson

Rotter obtained ex parte OFP against Hansen, her boyfriend, in 2005. After the first OFP expired, Rotter petitioned for a new OFP in April 2006. Following a hearing, the district court issued an OFP for two years. On appeal, Hansen argued (1) the district court erred by imposing an incorrect burden of proof on Rotter, (2) the factual findings did not support the OFP, and (3) the district court abused its discretion in managing Hansen's cross-examination of Rotter as well as his own direct testimony. First, the court held the district court was correct in the burden of proof imposed on Rotter because she was filing for a subsequent OFP, which is subject to a lesser burden than an initial OFP petition under Minn. Stat. § 518B.01, subd. 2(a). Second, the court held the factual findings supported the OFP and since those findings were based on a credibility determination, the court of appeals accorded deference to the lower court. Third, the court held the district court was within its discretion to direct and restrict Hanson's testimony and cross-examination because Hansen was proceeding pro se and had no expertise.

S

Santana v. Rodriguez, No. A11-0024 (Minn. Ct. App. August 22, 2011) (UNPUBLISHED).
Hennepin County, no judge reported

Respondent Santana obtained a two-year OFP against her former boyfriend, appellant Rodriguez. Respondent alleged appellant physically harmed her in November 2010 and continued to make threatening phone calls to her. Appellant testified respondent's allegations were not true and she had fabricated the November 2010 event in an attempt to prevent him from gaining custody of their daughter. Appellant argued the district court erred in issuing the OFP. The court of appeals found the district court issued the OFP based on respondent's testimony about the November 2010 incidence and other physical and verbal abuse incidences that occurred throughout their relationship. The court of appeals found the record supported respondent's testimony and affirmed the OFP.

***Sanz v. Biele*,** No. A09-166 (Minn. Ct. App. Dec. 8, 2009) (UNPUBLISHED).
Hennepin County, no judge reported

Appellant Biele challenged the district court's granting of an OFP, claiming the respondent, Sanz, did not satisfy her burden of proving that he engaged in domestic abuse. A petitioner seeking an OFP must allege and prove domestic abuse. In order for a court to grant an OFP, the petitioner must show either present harm or an intention on the part of the [alleged abuser] to do present harm. The ultimate decision whether to grant an OFP is within the district court's discretion. A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.

The appellate court held the district court did not abuse its discretion in issuing the OFP because Sanz proved the existence of domestic abuse. Although Biele disputed Sanz's claims, the injuries sustained by Sanz corroborated her version of the events. Further, the incident was corroborated by a police report, a medical report, and photographs taken the day after the incident. As such, Sanz satisfied her burden of proving that Biele committed acts of domestic abuse upon her and it was appropriate to issue an OFP.

Sapp v. Nelson, No. C7-96-1726 (Minn. Ct. App. May 20, 1997) (UNPUBLISHED).
Kandiyohi County, Judge John C. Lustrum

Through her attorney, minor child sought to terminate or restrict visitation with her father via an OFP petition. The district court determined that the petition should be considered a post-dissolution motion to restrict visitation and allowed the minor to intervene in the dissolution proceeding. At the post-dissolution hearing, the district court found that a child protection matter existed, but denied the motion to terminate visitation.

In agreement, the appellate court held that the district court's order presumed that at least some of the conduct the child complained of did occur, but that the conduct did not unequivocally rise to the level of abuse under § 518B.01 or endanger the child's safety under § 518.175. However, the appellate court was concerned that under the best-interest analysis of § 518.175, the district court failed to address circumstances that weigh heavily on that analysis. There was evidence in the record, for example, that the child threatened to harm herself rather than visit her father. Thus, a best-interest analysis must be applied to determine what continuing visitation should be ordered and what emotional supports and safeguards need to be in place to assure that visitation is in the best interest of the child. The case was remanded for these findings.

Schable v. Boyle, No. C4-99-1178 (Minn. Ct. App. Apr. 18, 2000) (UNPUBLISHED).
Ramsey County, Judge James H. Clark

In March 1999 Schable filed for and received an OFP against Boyle. The OFP petition and testimony given at the OFP hearing detailed an incident from December 1998 during which Boyle grabbed Schable by the wrist and threw her against the wall; several incidents in February 1999, including one when he broke the door window with a stick; and an incident in March when he kicked the car door where Schable was seated, while yelling at her. The OFP stated that the findings of fact were "based on the affidavit and petition for an Order for Protection and all of the records and proceedings in this matter." The order only specifically mentioned the December 1998 incident.

Boyle appealed, claiming he did not have a present intent to cause fear. The appellate court found that the trial court based the order on the petition and the hearing, not just on the December incident. The court found that the verbal and physical threats placed Schable in reasonable fear of physical harm.

***Schanze v. Schanze*, A15-0231 (Minn. Ct. App. December 14, 2015) (UNPUBLISHED)**
Dakota County, no judge reported

Danielle filed a petition for an OFP on behalf of her and her son. The district court issued an OFP, finding that acts of domestic harm occurred, including threats of harm to petitioner and others with intent to cause fear in petitioner, but did not find physical harm or abuse relating to the child. The court granted sole temporary legal and physical custody to petitioner (supervised parenting time to respondent), until the issue could be determined in a family court proceeding. Appellant argued that the findings did not support an OFP. The Court of Appeals determined the district court made adequate findings of domestic abuse. Appellant argued that the evidence failed to establish the statutory facts; however, the Court held that petitioner's testimony of repeated threats throughout the marriage was sufficient evidence.

Appellant argued that his due process rights were violated because the district court permitted petitioner to present evidence that was absent from the allegations in the petition for the OFP. The Court found that the district court did not violate appellant's due process rights because the petition for the OFP contained said allegations and appellant had a meaningful opportunity to be heard. Appellant argued that the district court abused its discretion by refusing to allow him to testify about statements petitioner made during marriage counseling. The Court cited Minn. Stat. § 148B.39(5) and held that the district court was within its discretion in finding this evidence irrelevant. Finally, appellant argued that the district court failed to make findings based on the best interest of the joint child. The Court of Appeals rejected this claim because the current version of Minn. Stat. § 518B.01 requires a different analysis. The Court of Appeals affirmed.

Schlosser v. Feist, No. C1-96-1396 (Minn. Ct. App. Dec. 24, 1996) (UNPUBLISHED).
Blue Earth County, Judge Richard L. Kelly

An overt act does not have to be physical. The parties lived together for almost two years with Schlosser's three children. Feist conceded that the appellant had not verbally threatened to physically harm her, but she testified he had threatened to physically harm her by his body language during in-person confrontations, including "raising the arms, yelling, all the things that preceded my being abused in the past when I lived with him." The definition of domestic abuse in the statute includes a requirement of present harm or an intention to do present harm. However, the overt act does not have to be a physical act to justify the order, but may also be a verbal threat, depending on the words and circumstances. Past abusive behavior, although not dispositive, is a factor in determining cause for protection.

Schmid v. Brooks-Schmid, No. C9-99-1080 (Minn. Ct. App. Feb. 1, 2000) (UNPUBLISHED).
Hennepin County, Judge David Duffy

Mother and father were married in 1993 and have three minor children. In September 1995, father began treatment for alcohol dependency. The following December, mother alleged numerous instances of physical and verbal abuse to the children and herself by the father. She requested and

received an OFP excluding father from the household for one year. In 1996, mother requested and obtained an extension of the original OFP for an additional year. In March 1996, father filed for divorce. The trial court awarded the parties joint legal and joint physical custody of their three children, despite father's previous domestic abuse. Mother appealed, claiming that father should not have any custody of the children, as he previously abused them and her. The appellate court ruled that the father may have custody because the abuse occurred more than four years ago and had not been repeated.

Schmidt, on behalf of P.M.S. v. Coons, 818 N.W.2d 523 (Minn. 2012).
Crow Wing County, Judge Erik Askegaard

An OFP may only be granted to a victim of domestic abuse. Mother left abusive father, seeking shelter with their son in her parent's home. Father filed a petition for an OFP on behalf of their son against the grandfather, alleging that he had committed acts of abuse against both mother and their son. An investigation of the case revealed that the child had not been harmed by living with his mother at his grandparents' home. The trial court found that the only act of domestic abuse grandfather had committed was an incident in which he slapped the child's mother in the face, but it was unknown as to whether the child witnessed it. Although the trial court did not find that the child had been a victim of domestic abuse, it issued a two-year OFP prohibiting the grandfather from committing any acts of domestic abuse against the child, including striking any person while in the child's presence. The OFP did not prohibit grandfather from having contact with the child. The Supreme Court held that because the trial court did not find that the child was a victim of domestic abuse, it abused its discretion when it issued the OFP.

Schroeder v. Schroeder, No. A13-2053 (Minn. Ct. App. July 21, 2014) (UNPUBLISHED).
St. Louis County, no judge reported

Respondent obtained an OFP against appellant, her estranged husband. At the hearing, respondent testified that appellant-had made "open-ended" threats against her and that he had grabbed her by the neck and thrown her against a wall. The district court did not abuse its discretion in granting the OFP on behalf of respondent.
However, the district court erred by ordering supervised parenting. The district court may restrict parenting time if it finds that parenting time "is likely to endanger the child's physical or emotional health or impair the child's emotional development." Minn. Stat. § 518.175, subd. 1(a)(2012). Here, the district court explicitly found that appellant did not abuse his son. The district court did not make any findings that B.C.'s physical or emotional health would be threatened, nor any finding that the children's emotional development could be impaired. The Court of Appeals affirmed in part and reversed in part.

***Seibert v. Anderson*, No. A15-0757 (Minn. Ct. App. March 28, 2016) (UNPUBLISHED)**
Crow Wing County, no judge reported

Appellant and respondent resided together and have two minor children in common. Respondent filed for and obtained an OFP against appellant on behalf of herself and their children. Upon appeal, Anderson argued the district court abused its discretion by issuing an OFP based on inadequate findings, asserting that the record did not demonstrate a present intent to inflict fear of imminent physical harm, bodily injury, or assault upon respondent. The Court of Appeals indicated that parts

of respondent's testimony, appellant's admissions, and the guardian ad litem's testimony (re: an interview with the children and a conversation with appellant), established facts that supported an inference that appellant intended to inflict fear of imminent physical harm.

The Court of Appeals concluded there was sufficient evidence to grant the OFP. Appellant raised concerns over findings of the respondent's credibility. The Court of Appeals stated that it is within the purview of the district court to make credibility determinations, and that they defer to the district court's credibility determinations. The Court of Appeals affirmed.

Selcuk v. Selcuk, No. A03-763 (Minn. Ct. App. May 4, 2004) (UNPUBLISHED).
Dakota County, Judge Thomas Poch

While divorce was pending, mother filed for and received an OFP, which transferred sole legal and physical custody of the parties' minor child to mother. Father appealed, stating that there was insufficient evidence to support the district court's decision to modify custody and parenting time because mother never showed that the child was in jeopardy. The appellate court pointed out that the Domestic Abuse Act does not require such a showing and held that because the district court made a finding of domestic abuse of mother by father, it was within the district court's discretion to award temporary custody "on a basis which gives primary consideration to the safety of the victim and the children." Minn. Stat. § 518B.01, subd. 6(a)(4). Father also argued that there was insufficient evidence to support the district court's order that he participate in a domestic abuse program, undergo anger management assessment, and have a chemical dependency evaluation. The appellate court disagreed, holding that because the district court's finding of domestic abuse was adequately supported by the record, it properly acted within its discretion to order the abusing party to participate in treatment or counseling, as allowed by § 518B.01, subd. 6(a)(7).

Shaw v. Sikora, No. A10-117 (Minn. Ct. App. Nov. 2, 2010) (UNPUBLISHED).
St. Louis County, no judge reported

Respondent Lisa Shaw obtained an OFP against her former husband, appellant Anthony Sikora. About six months after it was obtained, appellant violated the order by calling respondent on her cell phone. He pled guilty to a misdemeanor violation of the OFP. Appellant violated the OFP and its subsequent extension four times. Finally, respondent obtained an OFP for fifty-years. Prior OFP violations are a sufficient basis to extend an OFP. Due to the multiple violations, it was reasonable for respondent to fear appellant was capable of physically harming her. The district court did not make any findings as to why a fifty-year extension was more appropriate than a twenty-five-year extension. The case was remanded on this issue back to the district court for additional findings.

Siverling vs. Bjerke, No. A15-1974 (Minn. Ct. App. Aug. 15, 2016) (UNPUBLISHED).
Olmstead County

Appellant Bjerke and Respondent Siverling are the father and mother of the child in question, respectively. The parents are separated and have shared custody. When the child was returned to Siverling's house after spending time with Bjerke, Siverling noticed bruises on the child's back and on his buttocks. Siverling applied for an OFP immediately, and an evidentiary hearing was held where Siverling, Siverling's mother, and a guardian *ad litem* (GAL) testified about the bruises. Both Siverling and her mother stated that the child told them that the bruises had come from Bjerke. The GAL testified she had concerns about the child with Bjerke, and that the bruises did not likely come

from falling down stairs. The district court found in favor of Siverling and issued the OFP. The district court stated their opinion as a conclusion of law, which the Court of Appeals found incorrectly labeled, but could still be treated as a sufficient finding of fact. The Court of Appeals also found that the OFP was founded in sufficient evidentiary support.

Smith vs. Lyons, No. A16-0727 (Minn. Ct. App. Jan. 9, 2017) (UNPUBLISHED).
Hennepin County

Appellant Smith is the child in question's biological father; respondent Lyons was the child's former foster father, had visitation schedules with the child, and served as a third-party intervenor in Smith's custody proceedings against the child's mother. Smith filed an amended version of a previously denied OFP petition against Lyons, claiming sexual abuse by Lyons, as well as incidents of abuse at the child's preschool and between Lyons' daughter and the child. As evidence, Smith submitted two photographs of the child, which were found to have been edited, as well as a written assessment of the child by a child psychologist, where she stated there had been no abuse reported to her by Smith, and that the child had anxiety. The district court determined that Smith was not credible, due to his history of alleging unsubstantiated abuse; the district court found Smith had failed to meet his burden of proof of domestic abuse and denied the OFP petition. On appeal, Lyons moved to dismiss the appeal on the grounds that Smith's brief did not contain any legal arguments. Smith argued that the district court erred when it denied the OFP; the Court of Appeals found the district court's factual finding not erroneous because it was supported by the evidence. Smith also argued that the evidence was sufficient to grant an OFP; the Court found that the district court's determination of Smith's poor credibility was satisfactory for them to disregard his evidentiary submissions. Motion to dismiss, denied. District court ruling affirmed.

In the Matter of: Suzanne K. Splinter and o/b/o Minor Child v. Jean Renee Strait, No. A12-1805 (Minn. Ct. App. June 24, 2013) (UNPUBLISHED).
Ramsey County, no judge reported

The court may only grant an OFP to a victim of domestic abuse and must find that unsupervised parenting time endangers the safety of respondent or the minor in order to restrict parenting time. Appellant and respondent had a romantic relationship as well as a history of domestic abuse. They purchased a house together and appellant adopted respondent's son. After the relationship ended, their custody arrangement granted appellant time with the child at the home where the parties had previously lived together. After a March 21, 2012 incident in which appellant disabled respondent's home telephones, attempted to forcibly enter respondent's occupied vehicle and made physically threatening gestures, the court found that the behavior constituted domestic abuse, issuing an OFP for both respondent and child. The appellate court concluded that it required additional findings to determine whether appellant abused the minor and remanded the issue to the trial court. The appellate court also remanded to the trial court for findings on whether unrestricted parenting time compromises the safety of either the respondent or the child.

State v. Sieff, No. A03-1656 (Minn. Ct. App. Oct. 12, 2004) (UNPUBLISHED).
Nobles County, Judge David E. Christensen

On appeal from conviction for felony violation of an OFP, Sieff argued that the district court abused its discretion in declining to instruct the jury that the statute required that he "knowingly" violated a condition of the order. Sieff argued that the district court's instruction made the offense a

strict liability crime, and that because the order allowed him to discuss visitation with his ex-wife in a public place, the lack of the requested instruction prejudiced his case.

The Court of Appeals found that Minn. Stat. § 518B.01, subd. 14 does not dispense with the *mens rea* element. The statute requires that a defendant have knowledge of the OFP, and the state must prove the defendant knew of the OFP. A defendant who knows of the OFP is deemed to know the contents of the OFP, including the prohibited conduct. *State v. Colvin,* 629 N.W.2d 135,138 (Minn. Ct. App. 2001). The statute does not make an OFP violation a strict liability offense; knowledge is an essential element. Sieff wanted "knowingly." The district court used "knew of the order." The Court of Appeals determined that it cannot criticize an instruction that tracks the statute. Therefore, the Court of Appeals found the district court did not err.

Slupitskaya ex rel. A.G.S. v. Hagglund, No. A08-0889 (Minn. Ct. App. Sep. 8, 2009) (UNPUBLISHED).
St. Louis County, no judge reported

Appellant Hagglund engaged in inappropriate sexual behavior with his eldest daughter. As a result, the district court granted respondent an OFP pertaining to the sexually abused daughter, as well as extending the OFP to require appellant's parenting time with his younger daughter be supervised because the abuse of the eldest daughter occurred in the presence of the minor child. On appeal, appellant argued the district court abused its discretion by granting and extending the OFP because the evidence in the record did not support a finding of present harm to either child.

On review, the appellate court determined the district court did not abuse its discretion by issuing the OFP as to appellant's eldest daughter, as the evidence of harm was sufficient for the district court to infer the existence of present harm based on the totality of the circumstances. The court rejected the argument the incidents were too remote in time to constitute a present danger. The abuse occurred while appellant lived with respondent and while they were separated, and while the last instance of sexual contact occurred almost a year ago, the evidence of harm was sufficient for the district court to infer the existence of present harm based on the totality of the circumstances. However, in regards to the court extending the OFP to the couple's youngest child, the appellate court determined the extension restricting appellant's access to his youngest daughter was an abuse of discretion, as the record was void of evidence of a present harm or a threat to harm.

Sovick v. Rud, No. C1-94-1619 (Minn. Ct. App. Feb. 21, 1995) (UNPUBLISHED).
Polk County, Judge Russell A. Anderson

Erwin Rud challenged the trial court's OFP prohibiting him from harassing his uncle. The trial court could not properly issue a protection order under § 518B.01 without finding that domestic abuse had occurred. The appellate court affirmed the order under Minn. Stat. § 609.748, subd. 5(a) (1992), which permits a court to issue a restraining order upon finding a party has engaged in harassment. See Minn. Stat. § 518B.01, subd. 16 (1996) (proceedings under Domestic Abuse Act are not exclusive of other civil and criminal remedies). Although only served three days before the hearing, the trial court properly concluded that the nephew had the requisite five-day notice because he signed and filed a motion for continuance, upon which he acknowledged the date and time of the hearing and that he was the respondent in the case.

Speece v. Pinkerton, No. A14-1896 (Minn. Ct. App. May 18, 2015) (UNPUBLISHED).

McLeod County

The district court issued a one-year OFP protecting respondent, granting her physical custody of the parties' child, subject to appellant's supervised parenting time. At the hearing, respondent testified that appellant had mentally and physically abused her throughout their long-term relationship. Respondent also stated that appellant had kidnapped the child while she was at work. Sufficient evidence supported the district court's findings that respondent was in reasonable fear of appellant. A finding of abuse is not required for a subsequent OFP. The fact that the previous OFP was dismissed is irrelevant.

Sperle v. Orth, 763 N.W.2d 670 (Minn. Ct. App. April 7, 2009).
Chisago County, Judge Swenson

The district court erred by dismissing a petition for an OFP because both parties were not family or household members without first considering whether the parties' former relationship qualified as a significant romantic or sexual relationship under the Domestic Abuse Act. A former relationship may qualify as a significant romantic or sexual relationship under the Domestic Abuse Act. When determining whether a former relationship qualifies as a significant romantic or sexual relationship under the Domestic Abuse Act, a trial court must consider the length of the relationship, the type of relationship, the frequency of interaction between the parties, and the length of time since termination of the relationship.

Sroh v. Eam, No. A05-2 (Minn. Ct. App. Sept. 6, 2005) (UNPUBLISHED).
Ramsey County, Judge Rosanne Nathanson

Husband appealed from a district court order issuing an OFP, arguing there was insufficient evidence to support the order and no evidence of present harm, especially since he had petitioned for marital dissolution. The court agreed with the district court that incidents of abuse occurring two months prior to the OFP petition are not too remote to be admitted into evidence, particularly when they are so extreme that the present fear of the respondent is justified. In this case, appellant had attempted to strangle respondent. Therefore, the record supported the conclusion that respondent feared present harm, despite pending dissolution proceedings.

Steeves v. Campbell, 508 N.W.2d 817 (Minn. Ct. App. 1993).
Kanabec County, Judge James R. Clifford

An order denying a new trial motion in a domestic abuse proceeding is not appealable under Minn. R. Civ. App. P. 103.03(d). A motion for a new trial or amended findings does not extend the time to appeal a final order granting or denying a domestic abuse petition. Campbell received custody of her two children. Steeves, the father, filed for a domestic abuse petition on the children's behalf, alleging that Campbell had failed to protect the children from her live-in boyfriend. The trial court granted the order and transferred custody to Steeves for one year. The trial court denied Campbell's motion for a new trial. Although a hearing is required under the Domestic Abuse Act, it does not require that the matters be tried and appealed as in other civil cases. The legislature has not indicated as such, and therefore a new trial motion in domestic abuse proceedings is not authorized and an order denying such a motion is not appealable.

Sullivan v. Sullivan, No. A12-0046 (Minn. Ct. App. October 1, 2012)(UNPUBLISHED).

Hennepin County, Judge Ivy S. Bernhardson

A finding of present intent to inflict harm or fear of harm may be supported by the totality of the circumstances. Wife petitioned for an OFP against husband which was dismissed on jurisdictional grounds. A few months later, she filed a second petition for an OFP that included one additional incident of alleged abusive conduct. She was then granted an OFP. Husband appealed, but the court disagreed with his argument that only a "recent" act of domestic abuse can establish present intent. The appellate court affirmed the trial court's issuance of the OFP.

Sundquist v. Sundquist, No. C8-00-400 (Minn. Ct. App. Sept. 12, 2000) (UNPUBLISHED).
St. Louis County, no judge reported

The wife petitioned for an OFP, alleging that her husband physically abused her and threatened to take their son to Mexico if she filed for a divorce. After a hearing during which the parties presented conflicting testimony, the OFP was granted for one year. The court did not issue factual findings or conclusions of law. The judge did not prepare a memorandum in support of the court's order, make any oral findings, or fill out the OFP form appropriately. The husband appealed, arguing that the order cannot be sustained without evidence of present physical harm. The appellate court found that the record did contain undisputed evidence that the husband had threatened to kill his wife. Threats can establish a present intent to harm, but the order must be supported by factual findings. Here the court made no factual findings and the case was remanded.

Svendsen v. Strange, No. A07-166 (Minn. Ct. App. Feb. 28, 2008) (UNPUBLISHED).
Crow Wing County, Judge Frederick J. Casey.

Svendsen obtained an OFP against Strange after numerous incidents of domestic abuse. The order included a finding that Strange had abused Svendsen but made no mention of abuse regarding their daughter M.S.-S; the order also restricted Strange's parenting time with M.S.-S. Strange appealed, arguing there was no evidence he abused Svendsen and the district court abused its discretion in limiting his parenting time because there were no findings that he abused M.S.-S. On its own initiative, the court of appeals first considered whether the case was moot because the OFP was expired. Although such a case would normally be moot, the court reasoned a finding of domestic abuse of Svendsen by Strange would have a substantial impact upon future custody determinations since such determinations are based upon the best interests of the child and take into consideration any effect domestic abuse might have on the child.

After considering Strange's appeal on its merits, the court upheld the OFP, holding the testimony of several incidents of abuse could lead a reasonable fact finder to conclude that Strange had intentionally caused fear of imminent bodily harm to Svedsen. Additionally, the court held the district court's parenting-time restriction was proper because the district court found Strange abused Svendsen, and the finding of abuse against a non-child victim is sufficient for such a restriction under Minn. Stat. § 518B.01 subd. 6(a).

Sweep v. Sweep, 358 N.W.2d 451 (Minn. Ct. App. 1984).
Kandiyohi County, Judge Allan D. Buchanan

An OFP with a temporary custody order is appealable because the order determines the action. The child, whose mother had died, lived with the father, step-mother and the step-mother's three children. The step-mother obtained an OFP against the father based on allegations that he had sexually abused one of her children. After the father pleaded guilty, the child's maternal grandparent appeared at the OFP hearing and sought custody. The trial court awarded the step-mother custody of her three children, but awarded the maternal grandparent custody of the other child. The step-mother had standing to appeal as the non-adoptive, custodial parent of the child. Challenges to her standing go to the merits of the custody issue, not her right to appeal. Although the grandparents should have sought leave to intervene or at least given notice of their intent to seek custody, the trial court did not abuse its discretion in granting them custody.

Swenson v. Swenson, 490 N.W.2d 668 (Minn. Ct. App. 1992).
Beltrami County, Judge Terrance C. Holter

Although under an ex parte OFP the court may exclude any party from the dwelling they share or from the residence of the other, the post hearing remedies do not authorize exclusion of the abused party from the shared home. Maria Swenson petitioned for an OFP. After a hearing, the court found that Kenneth Swenson had committed acts of domestic abuse and ordered Maria Swenson to be excluded from the couple's home. The relief available under the Domestic Abuse Act includes excluding the abusing party from the dwelling. Therefore, the court erred in excluding Maria. The OFP did not contain the statutorily required notices of the consequences for violating the OFP. Although the district court erred in not including notices about the consequences of violating the order, the omission does not make the order unenforceable. The court may enforce a voidable order until found erroneous. Also, the statute specifically provides that violation of an OFP is a misdemeanor when the person to be restrained knows of the order. Therefore, the order could be enforced against Kenneth.

T

Tawyea v. Tawyea, Nos. A14-1286 and A14-1287 (Minn. Ct. App. February 17, 2015) (UNPUBLISHED).
Beltrami County, no judge reported

The district court is in the best position to determine the credibility of the witnesses. Appellant father and respondent mother presented conflicting testimony about whether respondent's slapping the child's head during breastfeeding injured the child. The district court found respondent's testimony to be more credible. The Court of Appeals affirmed the issuance of the OFP to respondent individually and on behalf of the child against appellant. The Court of Appeals stated, although there was no finding of domestic abuse committed by appellant within the OFP, if the OFP were to be remanded the district court would "undoubtedly" reach the same decision.

Thompson vs. Schrimsher**,** No. A16-0378 (Minn. Ct. App. Jan. 9, 2017) (UNPUBLISHED).
Ramsey County

Appellant Schrimsher and Respondent Thompson are father and mother, respectively, to a minor child. They lived together in Georgia for a while, where Thompson alleges the incident of physical abuse occurred. Thompson filed for an OFP in 2012 against Schrimsher after she moved back to

Minnesota, but it was dismissed with prejudice because she failed to attend her court appearance. At this time, a custody arrangement had been reached: joint legal custody, primary physical custody to Thompson, and Schrimsher would have Skype visitation with the child twice weekly. In 2015, Thompson filed another petition for an OFP, claiming she and her family were being terrorized by Schrimsher. She claimed he had called in an unnecessary welfare check, that Thompson was being harassed and threatened by a mysterious woman believed to be associated with Schrimsher, that he often was "bizarre" during his Skype conversations with the child, and that he frequently called the school for drop off and pick up times. The district court granted a two-year OFP in favor of Thompson and the minor child, citing an "unhealthy" fear of Schrimsher, due to his controlling behavior and attempts to disrupt her life. On appeal, Schrimsher argued the domestic abuse allegations were too remote, and the Court of Appeals agreed, ruling that the district court made no finding of domestic abuse. The Court of Appeals also ruled that bizarre behaviors cited in Thompson's OFP did not constitute domestic abuse. Reversed.

In re T.I.-C., No. C9-92-2156 (Minn. Ct. App. Mar. 2, 1993) (UNPUBLISHED), *superseded by statute*, Minn. Stat. § 518B.01, subd. 6(a)(4) (2005).
Hennepin County, Judge Lindsay G. Arthur

An OFP may award custody on a basis which gives primary consideration to the safety of the children and need not include the best interest factors unless custody is contested. The father applied for an OFP on behalf of daughter T.I.-C., alleging domestic abuse by the mother and seeking a change in custody. There were also allegations of abuse against the father. After a hearing during which both parties appeared pro se, the trial court removed the child from the mother's custody and awarded the father custody for one year, based on its finding that "such abuse as has occurred has apparently been for disciplinary reasons except for (mother's) boyfriend who pushes and scares (the child). Because of her long working hours, mother sees little of (the child) and not at all on weekends because of the (father's) visits." That "such abuse as has occurred" was not an adequate finding of abuse, and therefore the modification of the child's custody was inappropriate. Also, mother's statement at trial that she wanted the child to "come home" was a request that she be allowed to retain custody. Best interest factors were required because the mother contested the custody arrangement.

In 2005, the legislature amended subdivision 6(a) of § 518B.01. The section now states that a "court may provide relief as follows: . . . (4) award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. *In addition to the primary safety considerations, the court* may *consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award. . . ." (emphasis added). Thus, the best interest findings mandated by the holding of* T.I.-C. *are no longer required.*

Tschida v. Hemmesch, No. A11-1080 (Minn. Ct. App. June 11, 2012) (UNPUBLISHED).
Stearns County, no judge reported

Appellant Tschida petitioned the district court for an OFP against respondent Hemmesch, a former sexual partner. In support of her petition, appellant testified to the district court a domestic-abuse no-contact order (DANCO) was issued in July 2009 against respondent after he hit her in the chest and arms resulting in bruising. Respondent violated the DANCO numerous times; the last violation resulted in an incident which required appellant to seek medical attention at a hospital. The petition for the OFP was based off of a March 2011 incident during which respondent allegedly approached

appellant at a bar and followed her outside, screaming profanities. The court of appeals found the district court abused its discretion by not issuing an OFP. The district court had denied appellant an OFP because she and respondent had not had a "family or household relationship." However, the court of appeals found family or household members include "persons involved in a significant romantic or sexual relationship" under the Domestic Abuse Act. It did not matter the parties were no longer in a sexual relationship because during their relationship several abuse incidents occurred. The court of appeals found the evidence supported the issuance of an OFP and reversed the district court's holding.

Tung v. Oshima, Nos. C9-92-2352/C1-93-55 (Minn. Ct. App. July 6, 1993) (UNPUBLISHED).
Hennepin County, Judge Mary L. Davidson

A court must appoint a guardian *ad litem* (GAL) in cases in which there is "reason to believe sexual abuse has occurred." The parties were divorced and mother had sole physical and legal custody of the couple's children. After discovering that the father was bathing with the children, the mother filed for an OFP on behalf of the children. Child Protection found the father's touching of the children during bathing was harmful, although he claimed it was only for hygiene, not for sexual reasons. The OFP was denied because the court found that the father had discontinued the behavior in question.

The mother later moved for restricted visitation and a GAL appointment, based on new allegations of sexual abuse. The trial court denied the motions, and the mother appealed both denials. Deferring to the findings of the trial court, the appellate court determined that the father had not bathed with the children for sexual gratification and that he had discontinued the practice. Further, the mother failed to show her children were in present harm or that the father had an intention to do present harm. However, the appellate court found that the trial court erred in denying the evidentiary hearing and by not appointing a GAL. The mother's affidavits alleged specific incidents of sexual abuse, thus making out a prima facie case of endangerment and entitling her to an evidentiary hearing. The mother's allegations of sexual abuse were sufficient to meet the "reason to believe" standard in the statute requiring GAL appointment. Placing a restriction on the father's visitation was left to the trial court to determine on remand.

V

Vail vs. Vail, No. A16-1812 (Minn. Ct. App. May 15, 2017) (UNPUBLISHED).
Hennepin County

Appellant father and respondent mother separated in August of 2016. In September of 2016, respondent mother petitioned for an OFP on behalf of herself and the couple's children against appellant father. She made this petition based on father's alleged use, distribution, and sale of cocaine, as well as an incident of domestic violence occurring in June of the same year. The referee found that the drug claims were not sufficient causes for him to issue an OFP. At the court hearing for the OFP, the district court dismissed the children from the action and issued a one-year OFP against the father for the mother. The father appealed, arguing that the single incident of domestic abuse, which father does not challenge, was not proof enough of the presence of present harm of domestic violence to the mother. The Court of Appeals found that the district court did not err by finding the single incident of domestic violence to be present harm, and affirmed the OFP.

Vasquez v. Moore, No. C6-93-391 (Minn. Ct. App. July 20, 1993) (UNPUBLISHED).
Dakota County, Judge John Daly

Particularized findings are required for "time-significant child custody decisions in domestic abuse proceedings" and "orders in family court must contain particularized findings sufficient to support the issues decided by the court." The parties were divorced and shared joint legal and physical custody of their two children. The primary residence of the children was with the mother. The mother filed for an OFP, alleging the father was sexually abusing the two boys when they were in his care. Seven people testified at the evidentiary hearing and an OFP was issued ordering the father to have only supervised visitation for one year. The trial court's single sentence of findings constitutes conclusions of law, not the required findings of fact. The trial court also erred by not appointing a guardian *ad litem* because there was reason to believe the children had been victims of sexual assault.

Vogt v. Vogt, 455 N.W.2d 471 (Minn. 1990).
Steele County, no judge reported

The role of Court Services in establishing visitation rights in domestic abuse cases is to conduct an abbreviated investigation, interview the parties, sort out their respective positions and make recommendations to the court in deciding visitation. Wife petitioned for an OFP, alleging domestic abuse by her husband. At the OFP hearing, the court issued an order and told the parties to meet with Court Services to determine visitation. The parties signed a handwritten agreement setting out a temporary visitation schedule and attached it to the order. During the dissolution proceeding, the wife sought to vacate the visitation schedule. She argued the schedule was obtained by Court Services as a result of mediation, and she felt overpowered and confused. She also said she was told an order needed to be signed that day. Because the schedule was obtained through a process of mediation in a case where domestic violence was present, the order was reversed and remanded.

As a result of this case, Minn. Stat. § 518.619 was amended to include: "If the court determines that there is probable cause that one of the parties, or a child of the party, has been physically or sexually abused by the other party, the court shall not require or refer the parties to mediation or any other process that requires the parties to meet and confer without counsel, if any, present."

Vos v. Dehen, No. C4-94-1789 (Minn. Ct. App. Mar. 7, 1995) (UNPUBLISHED).
Hennepin County, Judge Charles A. Porter

The review of OFP cases is limited to determining whether the record supports the findings of fact and whether those findings support the conclusions of law and judgment. Mother has primary physical custody and when she arrived at the father's house to pick up the child, father did not immediately bring the child out to the car. The mother went to the back of the house, at which time father brought the child to the car. Mother knocked over a bike on the way back to the car, and the father took the child back into the house. The father pushed the mother away when she tried to hold open the screen door. She sustained injuries and was granted an OFP against the father. The referee found that father pushed mother and that this push constituted domestic abuse. The trial court affirmed these findings, therefore the ruling was not clearly erroneous. The court applied the proper legal standard when considering the father's defense of authorized use of force. The referee noted that any use of force has to be "reasonable under the circumstances" and found that there was no "threat of physical harm to anybody," so the defendant could not assert he was lawfully

defending his property. The referee used the father's statements at the hearing to conclude the father was concerned with the child's safety, not the property.

W

Wahl v. Wahl, No. A10-634 (Minn. Ct. App. Dec. 14, 2010) (UNPUBLISHED).
Wright County, no judge reported

Respondent Kimberly Wahl obtained a HRO against her former husband, appellant Christopher Wahl. Shortly thereafter, she obtained an OFP on behalf of herself and their children. The district court concluded appellant had committed terroristic threats by threatening to commit suicide, sending suicide letters, and sending threatening e-mails to respondent. The district court did not err in finding the e-mails were threats of violence because they read them in the context of the escalating situation in which appellant attempted suicide and told his daughter they would all be dead in a month. The district court properly found the statutory definition of terroristic threats was fulfilled.

Weigel v. Miller, 574 N.W.2d 759 (Minn. Ct. App. 1998).
Carver County, no judge reported

Findings of fact may not be appealed by the prevailing party, regardless of how it makes the party look. Weigel (mother) and Miller (father) have joint custody of their daughter. Weigel alleged sexual abuse by Miller and the district court granted an OFP against Miller. Weigel appealed the court's findings that the daughter had not been sexually abused and that she coached the daughter into making false allegations. The appellate court dismissed the appeal, recognizing that unnecessary findings are not binding in subsequent proceedings.

Welch v. Fuller, No. A03-796 (Minn. Ct. App. Apr. 27, 2004) (UNPUBLISHED).
Dakota County, Judge Joseph T. Carter

Fuller attempted to have Welch's petition for an OFP dismissed for failure to state a claim (Minn. R. Civ. P. 12.02), which the district court denied. Fuller appealed, stating that because Welch did not allege or offer evidence that he had a present intent to do harm to Welch, she had not stated a claim under the Domestic Abuse Act. Welch's June 2003 petition alleged that in May 2003, Fuller threw a stereo speaker at her head, hit her in the head with his hand, and threw her off a counter, banging her head against the floor and wall. Welch also alleged that Fuller had threatened to "kick the crap" out of her and testified that Fuller "threatens to beat me if he [doesn't] like the way I'm talking." The appellate court held that Welch properly showed present harm by way of the May 2003 incident and an intention to do present harm on Fuller's part by virtue of his threats to harm her, and affirmed the OFP.

Welsand v. Welsand, No. A08-0568 (Minn. Ct. App. Jan. 6, 2009) (UNPUBLISHED).
Beltrami County, no judge reported

When a father pulled his child inside the house by the collar of his jacket, it did not constitute abuse to warrant an OFP. The father grabbed the collar of the child's jacket and lifted or pulled him back toward the house. The father and his current wife did not observe marks on the child's neck, but the mother and her sister testified that there were zipper marks on the child's neck when the mother

picked up the children approximately three days later. There was also testimony that the father gave one child "a pill that made him feel funny" and that the boys reported "seeing [father] hit his new wife." The district court ruled from the bench, stating that "certainly grabbing a child and accidently causing a mark on the child is not abuse." The district court further concluded that there was not enough evidence regarding the pill. The court rejected the mother's argument that the district court's characterization of the incident as "parenting" is a misapplication of the Domestic Abuse Act because the act does not imply a different standard for what would qualify as domestic abuse during "parenting." By ruling from the bench and agreeing with father's counsel that OFPs are frequently abused, the district court did not create an "appearance of impropriety."

***In matter of: Emma Marie Welter. v. Blackwell*,** No. A17-0519 (Minn. Ct. App. January 16, 2018) (UNPUBLISHED)
Washington County, no judge reported

Appellant argued on appeal that the district court erred in denying his two requests for an evidentiary hearing. The Court held that the lower court did not abuse its discretion because it had granted him a hearing and two continuances, and he failed to appear. Second, Appellant argued that the district court erred in making a custody determination at the 2016 OFP hearing. Checking the boxes on the OFP did not mean the court made a custody determination, but simply signified what the law stated—biological mothers have sole legal and physical custody if not paternity is established. Lastly, the Court found Respondent's petition had sufficiently proven the required elements for a subsequent OFP because the court only had to find OFP violations, not convictions for violations.

Whalen ex rel. Whalen v. Whalen, 594 N.W.2d 277 (Minn. Ct. App. 1999).
Hennepin County, no judge reported

Mother and father were in the midst of a divorce. Father (without the help of his attorney) filed two separate petitions seeking orders for protection on behalf of his children against their mother and her boyfriend. Although counsel did not assist father in filing the petitions, she represented him at one of the hearings regarding the orders. The temporary ex parte orders were granted, but later dismissed for procedural reasons. Mother moved for sanctions and legal fees against the father; the requests were denied. Mother appealed, claiming that Minn. R. Civ. P. provide that one must be given notice of an OFP under the Domestic Abuse Act. In addition, she argued that the Minn. R. Civ. P. require attorneys who are representing clients in divorce actions to represent them in all domestic abuse proceedings. The appellate court ruled that even if parties are represented by attorneys, notice is waived for emergency ex parte orders. The threat of abuse to children constitutes an emergency situation. Therefore, the father was not required to provide mother with notice of the petition. In addition, the appellate court ruled that counsel was not required to represent father in parallel domestic abuse proceedings and therefore could not be held responsible for attorney fees arising out of the OFP actions.

White v. White, No. A03-848 (Minn. Ct. App. Mar. 30, 2004) (UNPUBLISHED).
Hennepin County, Judge Thorwald H. Anderson

Wife filed for an OFP against her estranged husband, alleging that he had poked her in the chest and grabbed her wrists when she tried to push him away from her and also that he entered her house by breaking the glass on the side door and removed his handgun from the house. The day before the

hearing was scheduled, husband filed for an OFP against wife and was granted an ex parte order, which was not served on wife or wife's attorney. At the hearing, the district court judge properly noted that because wife did not waive service and did not agree to the issuance of a reciprocal OFP, a reciprocal OFP was contrary to law and would not be granted. Husband had agreed to the issuance of an OFP against him without findings. The district court issued a reciprocal OFP. After a telephone conference with the judge, wife's attorney asked husband's attorney to draft a corrected order that would omit the provisions against wife. Husband's attorney refused, but offered to stipulate to an amended order if wife waived service and husband's OFP could be set for a hearing. No amended order was issued by the district court.

Wife appealed the reciprocal order and asked for bad faith attorney's fees. The appellate court held that nothing in the record warranted an OFP against wife and reversed the reciprocal OFP and remanded to the district court for corrected findings and an order that related solely to wife's petition and the evidence relevant to that petition. The appellate court also remanded wife's request for bad faith attorney's fees to the district court for findings and determination.

Wirth v. Wirth, No. A10-515 (Minn. Ct. App. Sept. 14, 2010) (UNPUBLISHED).
Douglas County, no judge reported

Appellant James Wirth and respondent Nancy Wirth were divorced after 28 years of marriage and were living in nearby cottages. Respondent went to appellant's cottage to talk; during this time appellant calmly threatened to kill her if she came near him again. Following this conversation, respondent obtained an OFP. Appellant argued the district court erred in finding domestic abuse occurred on the basis of terroristic threats. Appellant's threat to kill respondent was a threat to commit a crime of violence, thereby supporting the district court's conclusion. The evidence was sufficient enough to infer appellant intended to instill fear in respondent and occurred recently.

Wolf ex rel. J.R.F. v. Fairbanks, No. C1-01-1074 (Minn. Ct. App. Nov. 27, 2001) (UNPUBLISHED).
Hennepin County, Judge Marilyn J. Kaman.

Wolf sought an OFP against appellant Fairbanks on behalf of the parties' minor son. According to the child, Fairbanks twice threw him on the couch. At an evidentiary hearing, Fairbanks denied the incident, but admitted to disciplining his son by swatting him on the bottom. Finding Wolf more credible than Fairbanks and finding that Fairbank's own testimony corroborated elements of Wolf's petition, the trial court granted the OFP. Fairbanks appealed. The appellate court found that the father's hitting of the child did not physically injure the child. The court also found that the record lacked evidence of a present intention to inflict fear of imminent physical harm or bodily injury. Further, though Wolf told the court of past abuse and stated that she feared the respondent, she did not cite a recent incident of domestic abuse. Additionally, the court noted that because the respondent did not have the opportunity to cross-examine the witness, the respondent's right to a hearing was denied. The appellate court found that the trial court abused its discretion in granting the OFP and reversed the order.

Woodin v. Rassmussen, 455 N.W.2d 535 (Minn. Ct. App. 1990).
Swift County, Judge R.A. Bodger

Under the Domestic Abuse Act, persons who are not related by blood, have never been married, have never lived together, and who do not have a child in common, are not "family or household members," even though those persons may have an unborn child in common. Because the petitioner and her boyfriend did not have a "family or household member" relationship, the trial court did not have jurisdiction to issue an OFP.

August 1, 1991: The definition of "family and household members" in the Domestic Abuse Act was amended to include the following relationship: "a man and a woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time."

Z

Zavoral v. Wilson, No. A08-1876 (Minn. Ct. App. June 2, 2009) (UNPUBLISHED).
Hennepin County, no judge reported

Although contradicting testimony regarding the dismissal of a 2007 petition called the grandmother's credibility into question, the district court did not abuse its discretion by refusing the vacate the child's OFP. Grandmother applied for an OFP against appellant Wilson, who was not the father of the child but who had been living with the mother for six years. Grandmother had previously filed another petition for an OFP, and she claimed the petition was dismissed "because I believed my daughter's dad saying there would be no further assaults against my grandson." Although the district court had subject matter jurisdiction, it exceeded its authority by granting grandmother temporary custody in the original OFP and by placing constraints on the mother's custody in the second amended OFP without providing another evidentiary hearing.

Matter of Zemple, 489 N.W.2d 818 (Minn. Ct. App. 1992).
Nicollet County, Judge Norbert P. Smith

A trial court may take judicial notice of a prior outcome, but not of testimony given at that proceeding. In its memorandum, the trial court stated that it took judicial notice of the entire domestic abuse action file, which included the finding that appellant slapped his father in the face. The trial court did not specifically refer to this finding in its memorandum, but it incorporated the finding in its conclusion that appellant "poses a substantial likelihood of physical harm to others." The trial court erred in taking judicial notice of testimony given at the domestic abuse proceeding because the testimony by Zemple's father was inadmissible hearsay. Finding that Zemple slapped his father was sufficient to sustain a conclusion that Zemple poses a substantial likelihood of physical harm to self or others because it was an adjudicated fact. Although it would have been better to call the father for testimony, because the appellant did not challenge the accuracy of the domestic abuse findings, there was no clear error.

Zweifel v. Zweifel, No. A12-0513 (Minn. Ct. App. Dec. 17, 2012) (UNPUBLISHED).
St. Louis County, no judge reported

It is within the court's discretion to extend an OFP. In August 2009, appellant wife obtained an OFP against her respondent husband after he was jailed for an incident in which he allegedly hit her hard in the back of the head. Respondent did not challenge the initial OFP or appellant's subsequent application for its extension. After a January 2010 hearing to extend the OFP, the trial court granted the extension for two years from the hearing date. In January 2012, appellant applied

for a 50-year extension of the OFP which respondent contested. The court denied appellant's petition for an extension of the OFP stating that although her fear of respondent is genuine, it is not reasonable due to the lack of assaults or threats since at least 2010. The appellate court affirmed the trial court's denial of appellant's request for a 50-year OFP extension as well as its dismissal.

HARASSMENT RESTRAINING ORDERS

A

***Adler v. Adler*,** No. A17-0502 (Minn. Ct. App. October 30, 2017) (UNPUBLISHED)
Anoka County, no judge reported

Petitioner sought an HRO after Appellant sent harassing and intrusive text messages to him over a period of several months. At an evidentiary hearing, the district court determined that at least five of Appellant's text messages were "designed to and did in fact have a substantial impact on [petitioner's] privacy" because they solely exhibited harassing behavior. Appellant conceded that the text messages were "rude, antagonistic, and petulant," but argued that she did not intend for them to be harassing. However, the district court did not find her statement credible and entered the HRO against her. The appellate court affirmed because it had a fair opportunity to judge the credibility of Appellant's statement at the evidentiary hearing, and the harassing text messages were sufficient to support the district court's finding.

Agnew v. Campbell, No. C3-90-1130 (Minn. Ct. App. Dec. 4, 1990) (UNPUBLISHED).
St. Louis County, Judge James E. Preece

In early 1988, Judge Campbell issued a temporary restraining order against Roy Anderson and appellant Thomas Agnew, enjoining them from contact with Brenda Stepp. Later in 1988, Agnew petitioned Judge Campbell to enjoin Stepp's pending marriage because the earlier restraining order under the Domestic Abuse Act created a de facto marriage between Stepp and Anderson. Judge Campbell found the motion to be frivolous and a form of harassment, concluding Agnew's actions violated the terms of the restraining order. Judge Campbell issued an order to apprehend and hold Agnew for psychiatric evaluation after construing a psychiatrist's letter submitted by Stepp to show Agnew was mentally ill and potentially dangerous to Stepp. Agnew challenged the order and commenced a tort action. The appellate court affirmed the lower court's decision. Judge Campbell's jurisdiction as a district court judge extends to all civil matters, thus he acted within his jurisdiction in granting the restraining order and awarding attorney's fees for a frivolous and unfounded claim. Judicial immunity protects judges from civil liability for acts taken in exercise of their jurisdiction.

Anderson v. Lake, 536 N.W.2d 909 (Minn. Ct. App. 1995).
Clay County, Judge Thomas P. Schroeder

Anderson filed for an HRO against Lake. At the hearing, witnesses appeared and gave testimony. The witnesses were not sworn in. The judge questioned the witnesses, but did not allow the respondent to do so. The HRO was granted and respondent appealed. The appellate court found that a hearing is required under the HRO statute. The hearing must include a right to examine and cross-examine witnesses while they are under oath if the HRO is to last longer than fourteen days. The court also found that Minn. Stat. § 518B.01 and § 609.748 are sufficiently similar so that the court can recognize case law from one and apply it to the other.

Anderson vs. Weber, No. A17-0202 (Minn. Ct. App. Nov. 13, 2017) (UNPUBLISHED).
Chisago County, no judge reported

Respondent and his family were granted an HRO against Appellant after he had spread mulch

containing animal remains on the property line, shot his gun within one-hundred-feet of Respondent's children, placed barrels with obscene messages facing Respondent's house, yelled "F.U." at Respondent's family, and shot his gun while Respondent's children were getting on the school bus. The Court found that Appellant spreading mulch with animal remains and placing barrels with derogatory messages was a sufficient basis of harassment to issue an HRO. Second, the Court found that Appellant's harassing behavior had a substantial adverse effect on Respondent's family because, as a result of the behavior, the Respondent's took precautions, such as, installing an alarm system and taking self-defense classes.
Asgian v. Schnorr, No. C1-96-622 (Minn. Ct. App. Oct. 1, 1996) (UNPUBLISHED).
Hennepin County, Judge Robert G. Schiefelbein

The parties had an amicable relationship that ended when Schnorr learned in 1990 that Asgian had dated another man. Schnorr called and sent angry and threatening letters to Asgian, who lived in Tennessee, demanding an apology. When Asgian decided to return permanently to Minnesota, she petitioned for and received an HRO. Schnorr appealed, arguing the court's findings of fact did not support the issuance of the order and that the order violated his free speech rights.

Conduct must meet the requirements of two tests to be considered harassment. Under the first test, the conduct must be either "repeated, intrusive, or unwanted." Under the second test, the conduct must be "intended to adversely affect the safety, security, or privacy" of the complainant. The court reasoned from the letters and the testimony at the district court hearing that Schnorr's conduct was sufficiently unwanted. In addition, because the letters were unwanted and sent to Asgian's home, his actions were an invasion of her privacy. Thus, the court held that the district court was correct in considering Schnorr's actions harassment and issuing the order. The court further held the HRO did not violate Schnorr's free speech rights since it was a constitutional time, place, and manner restriction. A time, place, and manner restriction is constitutional if it is content neutral, is narrowly tailored to serve a significant governmental interest, and leaves open ample alternative channels of communication. The court concluded that the order was content-neutral because it applied to all communication with Asgian and served purposes unrelated to the content of the expression. Second, the court concluded the order was narrowly tailored and left open ample channels of communication since it only applied to communications with Asgian, an unwilling recipient.

B

Banken v. Banken, Nos. A11-2156, A12-0771 (Minn. Ct. App. February 11, 2013) (UNPUBLISHED).
Carver County, Judge Richard C. Perkins

Deceptive statements repeatedly posted online with the intent to create malice towards another are sufficient reason to issue an HRO. Wife repeatedly posted false statements about husband online. As a result, husband moved the trial court to order temporary relief directing wife to remove postings that included personal information about him and their children. Although he sought to prohibit her from engaging in similar online activity in the future, the order did not require her to refrain from commenting on their divorce. Husband's motion was granted based on a stipulation by the parties. Wife continued to post false statements about husband online and she was found to be in constructive civil contempt. This allowed her to purge the contempt determination in part by removing all online postings that contained her opinion regarding the dissolution. Husband successfully petitioned for an HRO against wife and she appealed. The appellate court found that

the order to which husband had stipulated did not include such a broad restriction on wife's right to comment about the dissolution action online. Thus, the Court determined that the trial court had abused its discretion when it required her to refrain from commenting about the dissolution online. However, the appellate court affirmed the trial court's issuance of the HRO.

State v. Barberg, No. A04-2058 (Minn. Ct. App. Dec. 6, 2005) (UNPUBLISHED).
Wright County, Judges Elizabeth H. Martin and Gary R. Schurrer

K.D. rented a house from Peter Barberg's father, Ralph. Because of ongoing problems with Peter, K.D. sought an HRO against him. Peter objected, arguing the house was part of a 70-acre farm that had additional buildings and land that were not part of the rental agreement. Despite this unobjected-to evidence, the district court issued an HRO, which simply said that Peter was to "stay away" from where K.D. "resides" and listed the address. One day, Peter went to the farm to clear away brush. He never saw K.D. and made sure he stayed on the very outside of the driveway. K.D. contacted law enforcement and Peter was later charged with the misdemeanor HRO violation. Peter applied the HRO and the court found that the HRO in this case was vague and ambiguous and therefore unenforceable. The court reasoned that the language of the order left Peter guessing at its prohibitions since he was responsible for tending a 70-acre farm that surrounded the house rented to K.D. Because the language made it impossible to determine whether Peter had violated the order, it was unenforceable.

Barrett v. Barrett, No. A12-0032 (Minn. Ct. App. July 16, 2012) (UNPUBLISHED).
Anoka County, no judge reported

Facts must be provided to support allegations that an HRO should be issued. Respondent mother was awarded sole legal and physical custody of the couple's daughters, and appellant father was granted parenting time. Appellant was required to pay child support and child-care costs, but stopped paying child support in July 2000. The trial court found appellant in contempt and sentenced him to 180 days in the workhouse, but conditionally stayed the sentence for one year. He remained unemployed or underemployed and failed to make his child support payments. Appellant moved the trial court to issue an HRO against respondent but did not provide facts to support his allegations. The trial court denied his motion and the appellate court affirmed the ruling.

Bazzaro v. Issaenko, No. A12-2017 (Minn. Ct. App. June 17, 2013) (UNPUBLISHED).
Hennepin County, Judge Unknown

An HRO may be granted based on a finding of repeated incidents or unwanted acts that cause recipient to become fearful. Appellant, an employee in respondent's research laboratory, contacted respondent multiple times via telephone and sent emails to her which were unwanted. Consequently, respondent sought and was granted an HRO by the trial court. Appellant argued that there was no evidence that respondent suffered a "substantial adverse effect" or that appellant intended to cause such an effect on respondent's safety, security, or privacy. Respondent testified that she felt her privacy was invaded when appellant advised her in some of the emails to get a divorce and that she was frightened because some of the emails were threatening. Respondent further stated that appellant's emails used words like "obsession" and "worship" that made her feel uncomfortable. The appellate court affirmed the district court's issuance of the HRO, but remanded to the trial court for correction of a clerical error.

Beach v. Jeschke, 649 N.W.2d 502 (Minn. Ct. App. 2002).
Hennepin County, no judge reported

Jeschke approached Beach at a school play and said, "You two had better come up with the $80,000 or you're both going to jail. This is going to be fun." The remark related to a pending child-support litigation matter. Beach petitioned for an HRO based on the statement and an allegation that Jeschke had grabbed her by her neck. After a hearing, the court found that Jeschke made the statement, but did not find that any physical contact occurred. Based on this evidence, the district court issued the HRO. The appellate court overturned the order, holding that a two-sentence comment made on one occasion does not meet the requirement of "repeated incidents" necessary to constitute harassment.

Beahrs v. Lake, No. C3-97-2222 (Minn. Ct. App. May 26, 1998) (UNPUBLISHED).
Ramsey County, Judge James H. Clark

Harassment must include "adversely affect[ing] the safety, security, or privacy of another." Embarrassing someone is not enough. In 1997, Beahrs fired Lake from his clerk position in one of Beahrs' tobacco shops. Several months later, Lake mailed public documents regarding Beahrs' legal problems to over sixty of Beahrs' personal and business acquaintances. Beahrs was granted an HRO and Lake appealed. The appellate court reversed, holding that embarrassment is not covered under the harassment statute.

Becker v. Becker, No. C8-93-263 (Minn. Ct. App. July 27, 1993) (UNPUBLISHED).
Stearns County, Judge Wayne Farnberg

Nancy Becker obtained an HRO against her brother Brian Becker based on allegations that he wrote threatening letters, looked for her in order to intimidate her, and sexually harassed her. Brian argued the district court erred in issuing the HRO. The court noted the judge's lack of full familiarity with the case and complete lack of the findings required to issue an HRO but noted the documentary evidence supported the conclusion that the HRO was proper. The court therefore remanded the case to allow the district court to make the required findings of fact but left a temporary HRO in place until that time.

Beier v. Sheets, No. C4-02-2035 (Minn. Ct. App. May 6, 2003) (UNPUBLISHED).
Stearns County, no judge reported

The court did not err in finding harassment when defendant called the victim a "psycho bitch" on two occasions and threw a drink on her on a third, as the third occasion is considered "assaultive conduct" under the harassment statute.

Benigni v. Tammaro, No. A03-1198 (Minn. Ct. App. July 20, 2004) (UNPUBLISHED).
St. Louis County, Judge John T. Oswald

Tammaro received a TRO against neighbor Benigni. At the hearing, Tammaro's request for an HRO was dismissed after a finding that his fear of Benigni lacked a sufficiently reasonable basis under § 609.748 to support a permanent restraining order. Two years later, Benigni sued for malicious prosecution and abuse of process, claiming that Tammaro had received the TRO based on false allegations. The district court dismissed the complaint. The appellate court affirmed the

district court's decision, holding that because the court issued the TRO, Tammaro had alleged sufficient facts to support a TRO.

***Berg v. Flaherty*, No. A15-1743 (Minn. Ct. App. June 13, 2016) (UNPUBLISHED)**
Dakota County, no judge reported

Flaherty had four criminal cases: one count contempt of court for willfully disobeying a court mandate and three counts of violating a restraining order. He entered Alford pleas and received stays of adjudication. When Berg's HRO against Flaherty was set to expire, she requested and was granted a lengthy extension due to Flaherty's two or more prior violations.

Flaherty appealed, arguing that the five incidents relied upon to issue the HRO did not meet the statutory definition of harassment. The Court of Appeals found that emails sent to community members and an incident at the parties' joint child's school band concert had a "substantial adverse effect…on [Berg's] safety, security, or privacy," and met the statutory definition of harassment. Flaherty argued that his criminal record could not establish the prior violations necessary for the district court to issue the HRO for more than two years, because they were resolved with Alford pleas and stays of adjudication. The Court of Appeals reasoned that because the Alford plea requirements were sufficient to support a criminal conviction, they must be sufficient for the district court to allow the district court in a civil HRO proceeding to find prior violations of a HRO. Flaherty argued that the criminal files could not establish violations because they were resolved as stays of adjudication, and no convictions were entered. The Court held that convictions were unnecessary because acceptance of Flaherty's Alford pleas provided ample evidence the Flaherty had violated prior HROs. Thus, the district court did not abuse its discretion by granting the HRO for more than two years. The Court of Appeals affirmed.

Boggs v. Boggs, No. A14-1744 (Minn. Ct. App. May 4, 2015) (UNPUBLISHED).
Wright County, no judge reported

Respondent obtained an HRO against appellant, based on evidence that appellant had his employee stalk her, monitor her social life, track her vehicle, and threaten her. Appellant owned the house that respondent lived in and operated horse stables in the vicinity. At the evidentiary hearing, appellant testified that he had a legitimate interest in the use of the residence and that his employee was required to maintain upkeep of the property. The district court determined that the employee was going on the property to monitor respondent and the idea that appellant was concerned for his property was not credible. Appellant could have instructed his employee to enter the property without rising to the level of harassment. The record supports the finding that appellant engaged in intentional repeated acts that were intrusive and/or unwanted.

Borukhova v. Borukhova, No. C2-95-1882 (Minn. Ct. App. Feb. 27, 1996) (UNPUBLISHED).
Hennepin County, Judge Robert G. Schiefelbein

Mother and daughter-in-law simultaneously filed HRO petitions against each other and the referee found they agreed to a mutual HRO. The district court issued mutual HROs on this basis. Mother appealed, arguing she never agreed to the mutual HRO. The court of appeals held there was no evidence to establish the mother agreed to the HRO because the record reflected that every time the mother was asked if she agreed to the order, she expressed a desire to continue with proceedings for a hearing on the merits. The court of appeals reversed the HRO.

Bovi v. Parask, No. C5-98-1616 (Minn. Ct. App. May 11, 1999) (UNPUBLISHED).
St. Louis County, Judge Terry C. Hallenbeck

Parask received an HRO against her ex-husband's current wife, Bovi. Bovi filed for and received an HRO against Parask. Parask was restrained from having contact with Bovi's children. Bovi was restrained from filing false reports with police agencies and from having contact with Parask, her children, or her employer. Bovi appealed, claiming that the district court erred in making the restraining order effective for two years because when added to the temporary restraining order, it surpassed the two-year statutory limit. The appellate court found the harassment statute set a limit on the duration of the restraining order, not on the restraining order combined with any temporary orders. Because the restraining order does not exceed the two-year statutory limit, the trial court did not err in setting the duration of the restraining order.

Braun ex rel. T.A.B. v. Fink, No. A05-958 (Minn. Ct. App. Mar. 14, 2006) (UNPUBLISHED).
Dakota County, Judge David L. Knutson

A single incident of sexual assault is enough to support a finding of harassment. However, a single incident of intrusion or an unwanted act is not. Parents filed a petition for an HRO on behalf of their two minor daughters. A criminal case was pending against Fink for sexual assault, a charge to which he admitted. Fink argued the evidence that he engaged in harassment, however, was insufficient. The court upheld an HRO regarding the younger of petitioner's daughters, as sexual assault was at issue. In contrast, the HRO regarding the older daughter was overturned as there was only a single incident of unwanted conduct. Harassment includes a single incident of physical or sexual assault, or repeated incidents of intrusive or unwanted acts, words, or gestures.

Bruggeman v. Walz, No. A08-172 (Minn. Ct. App. Dec. 9, 2008) (UNPUBLISHED).
Mahnomen County, no judge reported

The district court did not abuse its discretion in issuing an HRO where the evidence showed that appellant engaged in harassment of respondent, a county attorney, by making threats, engaging in threatening behavior, and calling the respondent abusive names. Appellant told respondent that she had better "watch her back," screamed and swore at the respondent at the sheriff's office, and made sarcastic toasts to the respondent and stated that she wished she had won a gun in a raffle so she could use it to shoot the respondent. The record therefore supports the district court's findings that appellant acted in a threatening nature toward respondent.

***Brunner v. Harper*,** No. A17-0146 (Minn. Ct. App. Sept. 11, 2017) (UNPUBLISHED).
Becker County, no judge reported

Failure of plaintiff to disclose witness list before evidentiary hearing for an HRO does not grant relief to the defendant. Harper made approximately 100 meritless claims to Brunner's place of employment and various state and federal agencies, resulting in negative impacts on the place of employment and Brunner herself. Harper also stalked Brunner in the community and near her home. The district court granted a HRO but declined to limit Harper's ability to file reports with public or private agencies, since this may chill protected speech. Harper also argues on appeal that Brunner was required to disclose her witnesses before the evidentiary hearing, the appellate court

affirms district court ruling and states that Brunner's failure to provide witness list prior to hearing does not entitle Harper to relief.

C

Carlson v. Petersen, No. A12-0893 (Minn. Ct. App. February 25, 2013) (UNPUBLISHED). Ramsey County, no judge reported

Although an assault which occurs during a physical fight provides enough factual support for the single-incident statutory ground for issuing an HRO, there is a repeated-incidents requirement for issuing one on behalf of children. Appellant got into a physical fight with respondent while he was trying to enter respondent's home to remove his children. Respondent called 911 and repeatedly told appellant to leave. Appellant began to argue with his wife and then started to hit and kick her. While respondent tried to help appellant's wife, both appellant and respondent got into another brawl. Appellant was eventually restrained until police arrived and was arrested for disorderly conduct. Respondent was injured during the fight and filed an HRO against appellant on his own behalf as well as his two minor children. The appellate court determined that although there was evidence that respondent's children were traumatized by the incident involving appellant, there was no evidence of specific behavior on appellant's part that caused their trauma. Thus, the evidence was insufficient to support the repeated-incidents requirement for issuing the HRO on behalf of the children. The appellate court reversed the issuance of the HRO for the children.

Carter-Wyman v. Wyman, No. A04-1042 (Minn. Ct. App. Apr. 19, 2005) (UNPUBLISHED). Hennepin County, Judge Francis J. Connolly

The district court issued an HRO prohibiting the appellant, Wyman, from contacting respondent, Carter-Wyman, "in person, by telephone, or by other means or persons." The district court found that there were "reasonable grounds to believe that [appellant-Wyman] has engaged in harassment" and specifically noted that appellant repeatedly sent Carter-Wyman "unwanted emails, letters and voicemails." Wyman challenged the HRO on appeal.

Wyman argued that the district court abused its discretion by issuing an HRO because the court relied on a definition of harassment that pre-dates the amendment in 2000. He argued the amendment defines harassment as "repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another." Wyman argued that nothing in the record supports the conclusion that he intended to adversely affect the safety, security, or privacy of Carter-Wyman. But the Court of Appeals disagreed, explaining that the new statute has defined harassment to include "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." Wyman's intent was, therefore, irrelevant if his conduct had a substantial adverse effect on Carter-Wyman's safety, security, or privacy.

Carter-Wyman testified that Wyman's comments and conduct adversely affected her security. The fact that Carter-Wyman called the police and filed a petition for an HRO shows that Wyman's conduct had a substantial adverse effect on Carter-Wyman's safety, security, and privacy. The record supported the district court's findings that Wyman harassed Carter-Wyman, and therefore, the Court of Appeals concluded that the district court did not abuse its discretion by issuing an HRO.

Chase v. Graham, No. C1-98-1158 (Minn. Ct. App. Nov. 10, 1998) (UNPUBLISHED).
Ramsey County, Judge Lawrence D. Cohen

Chase, a Minnesota State Patrol Captain, filed for and received an HRO restraining Graham from physically or verbally contacting five state government agencies for two years. According to witnesses, Graham engaged in repeated, intrusive, aggressive acts in each of the five agencies, adversely affecting safety and security. Graham appealed, claiming insufficient evidence, that the court inappropriately quashed her 13 subpoenas, that the harassment statute doesn't apply to agencies, and alleging violations of her informational and constitutional rights. The appellate court found there was sufficient evidence to support the order, the district court properly assessed each subpoena, a state agency is a "person" for purposes of the harassment statute, the broad scope of the order is necessary in light of Graham's conduct, and the HRO did not violate constitutional or statutorily protected rights.

In the matter of: Natasha June Marie Courtney v. McReynolds**,** No. A17-0759 (Minn. Ct. App. February 26, 2018) (UNPUBLISHED)
Hennepin County, no judge reported

Appellant argues the district court abused its discretion by extending an order for protection against him from two years to fifty years and from a 100-foot radius to a one-mile radius of the Respondent's home. The Court upheld the temporal change and found no mistake in the lower court's determination because it found that Appellant "willfully, repeatedly, and over a lengthy period of time" violated the HRO. However, the Court held that the one-mile restriction was excessive and unreasonable because the lower court failed to consider countervailing interests in imposing the restriction. The Court held that the nature and size of the one-mile restricted zone extended far beyond what was reasonable to solve the problem of contact between Respondent and Appellant.

Crapser v. Smith**,** No. A17-1238 (Minn. Ct. App. April 9, 2018) (UNPUBLISHED)
Wright County, no judge reported

Respondent was granted an ex parte HRO against Appellant. At an evidentiary hearing, the court explained to Appellant that he had the right to waive his right to a hearing and the court could enter an HRO without finding harassment; Appellant agreed. Three days later, Appellant motioned to dismiss the HRO, arguing that "there were no findings of harassment and [he] now object[ed] to the issuance of a restraining order." The district court denied the motion.

Appellant first argued on appeal that there was no evidence to support a finding of harassment for an HRO. However, the Court held that because Appellant agreed to the issuance of the HRO without any findings of harassment, evidentiary support for the allegations were unnecessary, and insufficient evidentiary support is not a basis for relief in such an instance. Further, Appellant argued that the HRO was invalid because he was pressured into agreeing to it. However, the record did not support Appellant's argument and the Court held that the pressure he felt did not amount to the absence of real consent.

D

Darling v. Koeneman, A10-2140 (Minn. Ct. App. August 22, 2011) (UNPUBLISHED).
Washington County, no judge reported

At an amended child custody hearing, appellant-father was ordered not to have any contact with his children besides his biweekly supervised parenting time. In addition, all communication between appellant and respondent-mother had to be done through a third-party computer system. Despite the no-contact order appellant began to continuously contact his children one month after the order was issued. As a result, respondent applied for a harassment restraining order (HRO) on behalf of herself and the children against appellant. Appellant testified to various events where appellant violated the original no-contact order. Appellant did not testify or submit an affidavit to refute respondent's claims; the district court issued the HRO. Appellant argued the district court's issuance of the HRO was not supported by evidence on the record. The court of appeals disagreed. Neither the district court nor respondent offered evidence that appellant intended to harass respondent and the children. However, the intent element may be inferred if appellant's behavior is characterized as "objectively unreasonable." The court of appeals determined the repeated disturbances throughout May 2010 constituted "objectively unreasonable" actions. Therefore, the district court's issuance of the HRO was affirmed.

Davidson v. Webb, 535 N.W.2d 822 (Minn. Ct. App. Sept. 15, 1995), *superseded by* Minn. Stat. § 609.748, subd. 1(a)(1) (2000).
Hennepin County, Judge Delia Pierce

Davidson obtained an HRO against Webb following an incident during which Webb yelled at Davidson, repeatedly using profanity, shaking his finger in Davidson's face, and poking Davidson in the lip. Webb argued there was insufficient evidence to grant the HRO on the basis of a single incident. The court held a single incident, constituted of multiple acts or words, was sufficient to find harassment under the HRO statute.

Davies v. Mehralian, No. A14-0599 (Minn. Ct. App. February 2, 2015) (UNPUBLISHED).
Dakota County, no judge reported

Ex-wife petitioned for a new HRO against ex-husband. Ex-husband brought four unsuccessful actions against ex-wife, where he was not found to be credible by any of the judicial officers. Additionally, the district court held that two instances of ex-husband's criminal conduct constituted harassment. Testimony supported the district court's conclusion that ex-husband's conduct had an adverse effect on ex-wife's privacy. The district court did not abuse its discretion by issuing the HRO.
Ex-husband argues the HRO restriction prohibiting him from being within one mile of Davies home is unconstitutional. Even if this issue had been properly briefed, the Court of Appeals noted that ex-husband is implicitly challenging the reasonableness of the restriction. The record supports imposition of the restriction to provide ex-wife with a zone of safety and security.

Dayton Hudson Corp. v. Johnson, 528 N.W.2d 260 (Minn. Ct. App. 1995).
Hennepin County, Judge Dolores Orey

Dayton Hudson filed for an HRO against Johnson; the petition was denied when the district court found Dayton Hudson was not "person" entitled to petition for an HRO under the HRO Statute. Minn. Stat. § 609.748, subd. 2 (1994). Dayton Hudson appealed and the court held a corporation is

a "person" under the HRO statute. The court reasoned the legislature generally defined "person" to include "bodies politic and corporate." Because "person" was not defined within the HRO statute, the court applied the legislature's general definition to conclude a corporation is entitled to petition for an HRO.

Deitering v. Mulligan, No. A09-1904 (Minn. Ct. App. Aug. 31, 2010) (UNPUBLISHED).
Washington County, no judge reported

Respondent Brenda Deitering obtained an HRO against appellant Brian Mulligan, a former "Big Brother" for her son. Respondent terminated the Big Brother/Little Brother relationship after three months because she did not think appellant was a good influence. Appellant continued to contact the child: he contacted him through a social networking site and went to his school, pulled him out of class and spent two hours talking with him. The district court was proper in finding harassment had occurred because appellant continued to see respondent's son after she told him not to and after she moved and had their phone number changed. It did not matter that appellant was a GAL because he was never appointed to be appellant's son's GAL; therefore, the contact was not authorized by the law.

In the Matter of: Krista Ann Dickenson and o/b/o Minor Children, No. A17-0224 (Minn. Ct. App. Oct. 23, 2017) (UNPUBLISHED).
Anoka County, no judge reported.

Mother files for HRO on behalf of herself and her minor children against the father of her children. Father fails to appear at hearing and subsequent rescheduled hearing, and HRO granted. Father then motions for continuance due to medical condition after car accident. The district court denies the motion. The appellate court found medical statements appellant provided to the court were vague and contradictory, thus the district court did not abuse its discretion in denying his motion for continuance based upon his medical condition.

Dillon v. Burton, No. A12-1369 (Minn. Ct. App. May 6, 2013) (UNPUBLISHED).
Crow Wing County, Judge Unknown

The hearing requirement for an HRO includes the right to examine and cross-examine witnesses and to produce documents. Respondent and appellant had an on-and-off relationship for several years. Respondent suspected that appellant was stalking her and petitioned for an HRO against him. At trial, respondent testified that soon after their relationship was over, he followed her into bars and drove past her home. She also testified that he photographed her truck parked outside someone else's house late at night and sent the image to her attached to a text message. Respondent also provided evidence that appellant sent her dozens of text messages that same night showing that he had driven by the house and accusing her of having a relationship with the homeowner. When respondent finished testifying, the trial court did not offer appellant an opportunity to cross-examine her. The trial court then questioned appellant who admitted to taking a photograph of respondent's truck and sending the image to her in a text message. When the trial court finished questioning appellant, it did not ask him if he had any further testimony or any witnesses to call. In fact, he had brought several witnesses. Instead the trial court judge declared the proceeding over and said he would issue the HRO. The judge stated that he realized appellant had intended to provide additional evidence and testimony, but that he intended to rule against him without hearing any of it. The appellate court reversed the trial court's issuance of the HRO and remanded for a new hearing.

Dunham v. Roer, 708 N.W.2d 552 (Minn. Ct. App. 2006).
Hennepin County, Judge Francis J. Connolly

Wife brought action against husband's lover for malicious prosecution, abuse of process, and defamation, all arising out of lover's petition for an HRO. Wife also sought declaratory relief, arguing that Minn. Stat. § 609.748 is facially overbroad and void for vagueness.

Both wife (appellant) and lover (respondent) were members of the Wayzata Country Club. Appellant confronted respondent at the club and accused respondent of an extramarital affair with her husband. Respondent then obtained an ex parte HRO. After a full evidentiary hearing, a two year HRO was issued, based on findings that appellant repeatedly called respondent's home, that respondent's lawyer sent appellant letters requesting she cease harassing respondent, and that appellant engaged in specific acts of harassment on five different occasions in two months. The district court later extended the order one year, but was overturned as the extension was based on only a single incident.

The court concluded that appellant failed to present sufficient evidence to establish a genuine issue of material fact to support her claims of malicious prosecution, abuse of process, and defamation. Appellant was also denied declaratory relief regarding her challenges to § 609.748. "Fighting words" and "true threats" can be regulated without violating the First Amendment. Additionally, appellant failed to prove the statute is vague. "The void for vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." Appellant did not show that an ordinary person of reasonable understanding would be unable to determine, with reasonable certainty, what repeated incidents are subject to the statute and likely to have a substantial adverse effect on the safety, security, or privacy of another.

***Dwyer v. Molde*, No. A15-0534 (Minn. Ct. App. Dec. 7, 2015) (UNPUBLISHED)**
Dakota County, no judge reported

Dwyer had an existing HRO and several extensions had previously been granted. Dwyer petitioned the court to extend the existing HRO for three years, and modify the provisions governing contact between Molde and the joint minor child protected by the HRO. During the hearing, Molde dismissed her attorney and requested a continuance, which was denied. She then left the hearing herself, even after the court informed her that the requested extension would be granted by default. The hearing continued, and a 50-year extension was granted.

Molde appealed, arguing that there was no evidence because the district court did not swear in witnesses or properly admit evidence during the hearing. The Court of Appeals found that Dwyer's affidavit and motion were submitted under oath, and the district court was entitled to consider the facts alleged in both. Molde next argued that since the district court made no findings of fact, it had no basis to grant a 50-year HRO. The Court ruled that the district court could have based its decision on Molde's multiple violations of prior HROs, or that Dwyer had two or more prior HROs in effect against Molde, and that either satisfied the statute requirements. Molde next argued that the district court was obligated to make its findings based on sworn testimony and properly admitted documents. The Court held that Molde functionally admitted all of Dwyer's properly pleaded allegations by leaving the hearing. Finally, Molde argued that the district court erred in granting relief exceeding that requested by Dwyer in his original papers. The Court of Appeals concluded that

without notice to Molde, the district court should not have granted Dwyer an HRO extension of a duration exceeding what he initially requested, so the Court modified the HRO to reflect the three-year period and affirmed as modified.

E

State v. Egge, 611 N.W.2d 573 (Minn. Ct. App. 2000).
Jackson County, no judge reported

S.B. obtained an HRO prohibiting Egge from contacting or harassing her. Egge subsequently applied for a life insurance policy, naming S.B. as beneficiary. Egge provided the insurance agent with S.B.'s phone number and directed the agent to call S.B. to get the information needed for the policy application. As a result of this conduct, Egge was convicted of an HRO violation. Egge argued contact by a third person was not specifically prohibited by the HRO. The court held, assuming that contact via a third party is prohibited by an HRO, there was sufficient evidence for the jury to conclude Egge violated the HRO because Egge gave his insurance agent S.B.'s phone number, knowing the agent would contact S.B. and thereby initiated contact with S.B. through this agent.

El Bazi v. Nolan, No. C8-98-962 (Minn. Ct. App. Nov. 24, 1998) (UNPUBLISHED).
Ramsey County, Referee Donna Treathewey

Nolan allegedly called El Bazi a "jerk" during a heated conversation about suspected illegal activities taking place at El Bazi's place of business. El Bazi applied for and was granted an HRO. Nolan appealed, claiming there was insufficient evidence to show harassment. The appellate court agreed and reversed the order. Harassment must amount to more than a single word or gesture.

Emery v. Bryand, No. A13-1146 (Minn. Ct. App. Dec. 30, 2013) (UNPUBLISHED).
Freeborn County, no judge reported

Taryn Emery petitioned the district court for a harassment restraining order against Joshua Bryand. She alleged that he sexually assaulted her and took photographs of her. The district court granted an *ex parte* HRO. Bryand appealed. The Appellate Court stated that failure to resist a particular sexual act does not constitute consent. Additionally, the Appellate Court cited Emery's brushing him away and rolling from her back to her side as an attempt to show she did not want to participate. The Court of Appeals stated that for a TRO based on a single incident of physical or sexual assault, the *petition* must allege an immediate and present danger; however the statute does not require a *finding* that such a danger actually exists. Furthermore, an HRO does not require a finding or an allegation of an immediate and present danger of harassment. It affirmed the lower court.

Engelmann v. Christos, No. A14-2163 (Minn. Ct. App. Oct. 26, 2015) (UNPUBLISHED)
Ramsey County, no judge reported

After a hearing during which both parties testified, Engelmann was granted an HRO against Christos. Christos appealed, arguing HRO was not supported by evidence. The Court of Appeals upheld the HRO, finding that repeated text messages after being asked to stop was objectively unreasonable conduct, that Appellant had engaged in harassment by calling Engelmann's wife, and

that picketing Engelmann's place of employment established an intrusive act that had a substantial adverse effect on his privacy.

Erickson v. Sorgert, No. C4-00-1818 (Minn. Ct. App. Apr. 3, 2001) (UNPUBLISHED).
Hennepin County, Judge Lucy Wieland

Several unwelcome attempts to contact a person can constitute harassment. An employee of a dating service interviewed a man to become a member of the dating service. During the interview, the man made several comments to the employee which made her feel uncomfortable. Although the man was declined for membership with the dating service, he continued to attempt to contact the employee. Even after she had made clear that his attempts at contact were not welcome, he continued to try to contact her through both her employer and her family members. The court held that these actions were sufficient to constitute harassment and upheld the issuance of an HRO.

F

Faricy v. Schramm, No. C8-02-689 (Minn. Ct. App. Nov. 12, 2002) (UNPUBLISHED).
Hennepin County, no judge reported

Schramm's children attend the Roman Catholic school where Faricy teaches. In November 2001, Schramm sent a letter to the school principal and the parish priest informing them that he suspected that Faricy might be a homosexual and asked what could be done to learn Faricy's sexual orientation and what effect that would have on his teaching position. Faricy obtained an HRO based on the argument that Schramm had engaged in two acts of harassment: sending a letter to Faricy's employer, and including in that letter information about Faricy's place of residence and the decal on his car. On appeal, Schramm argued his conduct did not constitute harassment under the statute. Minn. Stat. § 609.748, subd. 1(a)(1) (2000) requires repeated incidents of intrusive or unwanted acts. The court held that Schramm's single letter to the school principal and parish priest did not constitute harassment. The court reasoned that Schramm's letter was a single act and so did not meet the statutory requirements.

Fenske v. Fenske*,* No. C4-99-2007 (Minn. Ct. App. May 16, 2000) (UNPUBLISHED).
Olmsted County, no judge reported

Mother and father shared joint physical and legal custody of their children. Father filed for an HRO against mother. Mother requested they submit to mediation. The judge ordered the parties to meet with a mediator. Furthermore, the judge ordered that if the parties do not reach an agreement through the mediator, then the mediator must provide his/her recommendations regarding mother and father's contact with each other. The parties did not come to an agreement with the mediator and therefore were required to meet with the judge. At the hearing, father (who was not represented by an attorney) submitted an unsigned document that set out the basis for his allegations. He later filed an affidavit and petition concerning this document and was questioned under oath concerning the allegations. Mother (represented by an attorney) did not object to this document, ask for a continuance so she could review the document and prepare a defense, or fully question the father about his allegations. The court granted father the HRO. Mother appealed on three grounds.

First, mother argued that the document with father's allegations was inadmissible. The appellate court ruled that mother was given adequate opportunity to be heard and present evidence to contradict father's allegations.

Second, mother argued that there was no evidence to support the issuance of an HRO. The appellate court ruled that they would not overturn a district court's ruling unless it is clearly erroneous. There was evidence to support the district court's ruling.

Third, mother argued that the court improperly used information obtained from a mediator. The appellate court ruled that the court properly used the mediator as an expert witness to recommend the appropriate type of conduct.

Fiduciary Foundation, LLC ex rel. Rothfusz v. Brown, 834 N.W.2d 756 (Minn. Ct. App. 2013). Ramsey County, no judge reported

The Fiduciary Foundation, LLC (Fiduciary) petitioned on May 15, 2012, for a two year HRO on behalf of Lois Rothfusz, against her daughter, Kathy Brown. The district court granted Fiduciary an *ex parte* Temporary Harassment Restraining Order (THRO). It detailed that the respondent can ask the court to change or vacate within 45 days of the date of the order by filing a request for hearing. Brown was served a copy of the order on May 29, 2012. On August 9, 13, and 14, Brown filed motions with the district court to vacate the *ex parte* HRO and sought a motion hearing. The district court denied Brown's motion to vacate the *ex parte* HRO because she had received personal service of the THRO, failed to timely request a hearing and had no excuse for failing to act timely. The district court denied her requests for a hearing on the *ex parte* HRO and a reconsideration of the court's order denying her motion to vacate the *ex parte* HRO. Brown appealed. The Court of Appeals determined that the HRO currently in effect is an *ex parte* HRO, not an *ex parte* THRO, because no hearing was timely requested. *Ex parte* orders are not appealable. Under Minn. Stat. § 609.748, subd. 4, when no hearing is held an *ex parte* THRO issued under subd. 4 becomes an *ex parte* HRO under subd. 5. Minn. Stat. § 609.748, subd. 4 and subd. 5. The Court of Appeals said that the order denying Brown's motion to vacate the *ex parte* HRO is appealable, because it is a final order affecting her substantial rights.

Fischer v. Rechtzigel, No. A13-1661 (Minn. Ct. App. August 25, 2014) (UNPUBLISHED). Dakota County, no judge reported

Respondent Fischer obtained a HRO against appellant Rechtzigel, barring appellant from entering respondent's property. The district court stated that the HRO applied to any third party that could act on appellant's behalf. Subsequently, appellant hired a surveyor to enter the "property delineated by the court orders" to complete litigation in the companion case. Later in the month, respondent noticed that seven iron monuments had been placed four feet past the boundary of his property. Respondent argued that the HRO had been violated by a third party, appellant did not secure the court's permission when entering the property, and the surveyor, in his capacity, had no right to place iron monuments on his property. The district court extended the HRO until a decision could be made "to minimize further animosity that's going on." The district court abused its discretion because currently there is no language allowing an extension pending further court orders, within the statute. The district court also did not have the authority in the HRO proceeding to allow respondent to remove the monuments.

Foss v. Vaughn, No. A07-1691 (Minn. Ct. App. Sept. 16, 2008) (UNPUBLISHED).
Koochiching County, no judge reported

Foss petitioned for an HRO against Vaughn, who failed to appear for the hearing. However, the court received a phone call on the morning of the hearing stating that the appellant was out of town and that he was trying to fax information to the court. No fax was received as of the time of the hearing. Vaughn did not request a continuance. The district court entered an HRO. Vaughn appealed, arguing he did not receive adequate notice of the hearing, the district court judge was disqualified for bias, and the evidence does not support the order. Proper notice of the hearing was mailed to Vaughn in accordance with Minn.Stat. § 609.748, subd. 4(d) (2006). In addition, the record shows no basis for the district court to sua sponte disqualify the judge. Finally, the district court determines the credibility of a witness. Vaughn's admissions corroborate several of Foss' allegations. The record in this case shows that the district court did not err in issuing the HRO.

Francis v. Lawson, No. A05-1709 (Minn. Ct. App. July 25, 2006) (UNPUBLISHED).
Rice County, no judge reported

Cindy and Richard Lawson and their minor children appealed the district court's issuance of an HRO, arguing the order lacked a factual and a legal basis. Examining the lower court's order for an abuse of discretion, the appellate court found the findings below did not establish repeated incidents of harassment and reversed the issuance of the HRO.

Respondent Francis and the Lawsons are neighbors. Francis alleged the Lawsons threatened her on numerous occasions, shot at her chickens and cat with a BB gun, stole her tools, allowed their dog onto her property, and stabbed her hog. Of these allegations, the district court based the HRO on the fact that Francis saw one of the Lawsons shoot her cat and on the fact that the Lawson's admitted to owning a BB gun. The district court also found that the Lawson's dog had trespassed on Francis' property. The appellate court, however, found that these acts relate to separate individuals and do not amount to repeated incidents of harassment for the individuals involved. Further, the appellate court found that the dog's mere presence on Francis' property did not have an effect on Francis' safety, security, or privacy.

Franz v. Lyons**,** No. A09-1171 (Minn. Ct. App. Feb. 23, 2010) (UNPUBLISHED).
Crow Wing County, no judge reported

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 subjected to harassing conduct. Appellant Franz asserts the district court abused its discretion by dismissing her petition for an HRO, arguing respondent committed harassment by the removal and destruction of signs appellant had posted on what she maintained was her property. Respondent offered contradictory testimony indicating her mother owns the property, she only moved the signs across the road at her mother's request and denied destroying them. Removal of the signs may be objectively unreasonable if appellant Franz owned the property on which the signs had been posted. If respondent Lyon's mother owns the property, respondent's removal of the signs at her mother's request would not be objectively unreasonable, nor would it demonstrate an intent to harass appellant**.** Based on contradictory evidence regarding the nature of the property

interest, the court found the district court's conclusion that appellant had not proved removal of the signs was objectively unreasonable or intentional was not an abuse of discretion.

***Freihammer v. Powers*,** No. A09-1562 (Minn. Ct. App. June 15, 2010) (UNPUBLISHED). Wabasha County, no judge reported

Appellant Powers argued her communications and conduct, even if true, do not constitute harassment under the HRO statute because the communications were not obscene or vulgar. The appellate court found a party's actions do not need to be obscene or vulgar to constitute harassing conduct. Therefore, the district court did not abuse its discretion in granting Freihammer an HRO. Further, Powers argued the district court should have allowed her to access to the electronic copies of the e-mails to give her an opportunity to prove the e-mails had been fabricated or altered, the appellate court also affirmed the district court's discretion in not admitting said electronic copies. The district court admitted the e-mails in paper form. Powers was able to testify she did not send the e-mails and they were fabricated. Therefore, the e-mails were admitted in a "reasonably usable form." Thus, the appellate court determined Powers has not demonstrated the district court abused its discretion in denying her request for production of the electronic versions of the e-mails.

G

Gilliard vs. Leatherman, No. A16-0132 (Minn. Ct. App. October 3, 2016) (UNPUBLISHED). Steele County

Appellants father, Leatherman, and paternal grandmother, Mackay, are involved in a Washington state-based custody dispute regarding the minor child Leatherman has with Respondent Gilliard. After repeated incidents of harassment by both Leatherman and Mackay, Gilliard filed HRO petitions on behalf of herself and her minor children. At the evidentiary hearing, Gilliard elaborated on the harassment, which included, but was not limited to: death threats, threats of violence, threats against property, threats to kidnap Gilliard's youngest child, theft of personal items, multiple false reports to CPS, and false accusations made on social media. These were conducted by both Leatherman and Mackay. Appellants moved to dismiss the HRO arguing the custody suit in Washington meant that the district court did not have subject-matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The district court granted the HRO. On appeal, Leatherman and Mackay re-argue their subject-matter jurisdiction claim, and they also argued that the evidence was insufficient to grant the HROs. The Court of Appeals concluded that the custody suit in Washington did not preclude the district court from granting the HROs. The Court found that the record contained sufficient evidence to support the district court findings of harassment, and that such harassment was reasonably found to have occurred in front of the children. HROs issued properly. Affirmed.

Gornovskaya v. Ponkin, No. A14-0147 (Minn. Ct. App. November, 24, 2014) (UNPUBLISHED). Dakota County, no judge reported

Respondent Gornovskaya obtained an HRO against appellant Ponkin, her former husband. Ponkin texted Gornovskaya a semi-nude picture of her and called threatening to publish pictures of her. The district court concluded that both incidents were objectively unreasonable. Therefore, contrary to Ponkin's argument, Gornovskaya did not need to also prove Ponkin's intent. The court also found that Gornovskaya had an objectively reasonable belief that appellant's act of texting the

picture had a substantial adverse effect on her privacy. The record supports the issuance of the HRO, due to the determination that Ponkin engaged in unwanted and intrusive acts.

Grams v. Sarasti, No. C7-01-91 (Minn. Ct. App. June 26, 2001) (UNPUBLISHED).
Ramsey County, Judge Joanne M. Smith

Grams and Sarasti lived in the same apartment complex, but in different buildings. Even though Grams made it clear that she did not want any contact with Sarasti, he persisted in making phone calls to her, leaving her letters, knocking on her door, and taking pictures of her. Due to her feelings of fear based on Sarasti's actions, Grams filed for an HRO against him. The district court issued the order and Sarasti appealed. He argued that there was insufficient evidence for the court to have found that he harassed Grams. However, the Court of Appeals found that Sarasti was basically arguing that Grams and her witness lacked credibility and that the district court should have believed his testimony. The Court of Appeals pointed out that the credibility of the witnesses is an issue for the trial court and upheld the issuance of the HRO.

Grantz v. Domeier, No. C5-02-83 (Minn. Ct. App. Oct. 15, 2002) (UNPUBLISHED).
Hennepin County, Judge Harten

Collateral estoppel is meant to apply to an issue of ultimate fact. Appellant Domeier argued on appeal that because Grantz petitioned for and was denied an OFP in March 2001, any evidence of acts before March 2001 may not be considered by the court under the principle of collateral estoppel. The appellate court disagreed, likening the denial of an OFP to the process for civil commitment. The fact that Grantz was denied an OFP in March 2001 does not mean that prior incidents did not form a pattern of conduct that would later provide reasonable grounds for believing that appellant had engaged in harassment. The Court of Appeals also found that the district court did not err in granting the petition for an HRO where, after a 6-month relationship with Grantz, Domeier interfered with Grantz's personal life to the point where it had a substantial adverse effect on her privacy. The Court of Appeals found that the district court made sufficient findings of fact to warrant the issuance of an HRO against Domeier. Finding that this appeal appeared to continue Domeier's pattern of using the court system to contact and harass Grantz, the appellate court ordered appellant Domeier to pay $500 attorney fees as a sanction for his abuse of the legal system.

Gregor vs. Gregor, No. A16-0146 (Minn. Ct. App. August 20, 2016) (UNPUBLISHED).
Olmsted County

Appellant Dawn Buttera Gregor and Respondent Nathan Gregor divorced in 2008 in Rochester, and have one minor son together. Respondent and his new wife live in Rochester, but Appellant moved to Minneapolis, and wanted their son to move there as well and go to school in the district by her home. Respondent was able to keep the child in school in Rochester, and was granted a motion for emergency relief to prevent appellant from picking up the child from school when she did not have parenting time, as she was want to do. Appellant called the police to have them investigate a false child welfare check at Respondent's residence, and she went so far as to enroll their son in a Minneapolis school. As a result, the district court suspended her unsupervised parenting time, and sole custody was granted to Respondent. After this, Appellant made several more phone calls for child welfare checks, and continued to make threats against Respondent. Respondent had a previous HRO against Appellant from 2013 – 2015, and sought an additional one

in 2015, from which this appeal comes. Although Appellant argues otherwise, the Court of Appeals found that repeated and unwarranted child welfare checks, the inundation of phone calls to Respondent, and her history of violating court order, were sufficient grounds upon which to grant an HRO, as they, combined, constituted sufficient emotional abuse. Affirmed.

H

Hamlin v. Barrett, No. C1-98-1774 (Minn. Ct. App. June 29, 1999) (UNPUBLISHED).
Ramsey County, Referee Manuel J. Cervantes

Barrett and Hamlin work together. On March 27, 1998, the two argued in Barrett's office. Barrett's coworkers told Hamlin that the office was closed and he needed to leave. He refused. Barrett started to exit the office with a computer and Hamlin charged down the hall at her, trying to stop her. Hamlin called the police. Both Hamlin and Barrett were arrested and charged with disorderly conduct. Barrett filed for and received an HRO against Hamlin. Hamlin appealed on three grounds.

First, he claimed that his actions were not harassment because the "harassing" conduct was a single, isolated incident and because there was no reasonable basis to believe similar conduct would occur in the future. The appellate court noted that the district court found that Hamlin was a contract employee who had the obligation to leave when asked. This he refused to do. Further, Hamlin had rushed Barrett down the hallway in an aggressive manner, thus raising apprehension in her. The appellate court held that conduct such as Hamlin's, consisting of more than one act, word, or gesture in a single incident, may constitute harassment under the statute. "There is no requirement that the district court find an ongoing pattern of conduct likely to reoccur before it can issue a restraining order."

Second, Hamlin argued that he did not commit harassment because he did not intend to harass Barrett. The appellate court ruled that a court may infer a party's intent if their actions constituted harassment.

Third, Hamlin argued that the findings of fact were clearly erroneous. The appellate court ruled that a trial court's findings of fact will not be overturned unless they are clearly erroneous. They found that the facts supported the verdict.

Hanson v. Browning, Nos. C1-03-236 and C3-03-237 (Minn. Ct. App. Sept. 3, 2003) (UNPUBLISHED).
Kittson County, Judges Donald J. Aandal and Dennis J. Murphy

Specific intent to harass is not required before an HRO can issue; the statute requires only reasonable grounds to believe that a person has engaged in "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." When a masseuse does not ask the offender to stop the unwanted behavior or not to come back, and continues to book appointments for the offender after the specific incident she claims adversely affected her, there are no reasonable grounds to believe the offender's conduct had a sufficient adverse effect to justify the issuance of the HRO.

***Hanson v. Burridge*,** No. A16-2069 (Minn. Ct. App. Aug. 7, 2017) (UNPUBLISHED).
Dakota County, no judge reported

In the context of sexual assault, no direct evidence of sexual assault is required, direct evidence that respondent intended intimate contact to occur is required to establish sexual contact. Hanson filed for a HRO after Burridge sexually assaulted her by touching her between her legs over her clothing after she fell asleep next to him in his dorm room. District court ordered the HRO and ordered Burridge to move out of the dormitory in which he and Hanson had been living. Burridge appealed arguing that Hanson's testimony was not enough to maintain the HRO and the appellate court affirmed district court decision, holding that testimony of the petitioner is enough to prove requisite harassment for an HRO.

State v. Harrington, 504 N.W.2d 500 (Minn. Ct. App. Aug. 3, 1993).
Ramsey County, Judge Lawrence D. Cohen

Rasmussen, director of a clinic providing abortion services, obtained an HRO preventing Harrington and Friberg from picketing in front of her home. Subsequently, both Friberg and Harrington participated in separate picketing incidents and were convicted of violating the HRO. Harrington and Friberg argued there was insufficient evidence to support their convictions for target picketing because they were on the street. The court held there was sufficient evidence to uphold the HRO violation because the HRO specifically prohibited picketing in front of Rasmussen's home and Harrington and Friberg passed in front of her home while picketing.

Harvieux v. Doering, Nos. C2-02-1918/CX-02-2105 (Minn. Ct. App. June 17, 2003) (UNPUBLISHED).
Dakota and LeSueur Counties, Judge Robert H. Schumacher

A district court may base issuance of an HRO on evidence that the respondent was recently convicted of stalking the petitioner. This case was a consolidation of two appeals. Over a period of six years, Doering harassed Harvieux on multiple occasions. Harvieux was granted an HRO against Doering in March 1999, and Doering was convicted of felony harassment of Harvieux and her twin sister in February 2001. After Doering's release from prison in May 2002, Harvieux again petitioned the court for an HRO against Doering, which the court granted. The first issue on appeal is whether it was proper for the district court to grant an HRO based on the fact that Doering was convicted of stalking Harvieux and sent to prison. The Court of Appeals held that it is permissible for the district court to base issuance of an HRO on a recent conviction, because the conviction required proof that Doering engaged in harassment, which meets the requirements of the HRO statute.

Doering's second appeal was of the district court's decision denying Doering an HRO against Harvieux. Doering argued that the court denied him the right to present witnesses because the court proceeded without Doering's witnesses, who were unavailable or unwilling to testify. The Court of Appeals held that the district court acted within its wide discretion by proceeding with the hearing without Doering's witnesses.

Hatfield v. Anderson, No. C7-02-733 (Minn. Ct. App. Apr. 1, 2003) (UNPUBLISHED).
Ramsey County, Judge Hudson

Appellant Anderson argued that he was denied a full hearing because the district court denied his third request for a continuance and limited his cross-examination of Hatfield and her mother. Anderson requested multiple continuances so that he could obtain a transcript from a previous court hearing. The appellate court found the district court did not abuse its discretion when not allowing a third continuance because it determined the transcript in question was not relevant to the present proceedings. The district court did not abuse its discretion by limiting Anderson's cross-examination of Hatfield and her mother. The district court limited cross-examination to only relevant matters, and Anderson was given ample opportunity to give testimony and to cross-examine witnesses, thus there was no abuse of discretion.

The appellate court found that there was sufficient evidence for an HRO based on the two alleged incidents: 1) Anderson left a note on Hatfield's car (which was in her driveway) stating that his father had died and he wanted to "end old wounds and heal them" and "you have my address XXOX." 2) Anderson followed Hatfield in her car for several miles and made obscene hand gestures to her and her passenger.

Heard v. Stewart, No. A09-1723 (Minn. Ct. App. Sept. 18, 2007) (UNPUBLISHED).
Sherburne County, Judge Mary A. Yunker

Betty Heard and her daughter, Diane McKinney, have lived across the street from Hank and Anne Stewart since September 2000. The Stewarts' mailbox is located on an easement in front of appellant's house, and there have been confrontations between the parties when the Stewarts retrieved their mail. On June 22, 2006, Heard and McKinney petitioned for a HRO. The district court, after a hearing, determined the allegations of harassment had not been proven and dismissed.

On appeal, Heard and McKinney argued that the district court erred in failing to consider the evidence in the light most favorable to them. The court stated that Heard and McKinney, as petitioners, bore the burden of proving the allegations in the petition. Heard and McKinney's case presented evidence that conflicted with the Stewarts' case and, regarding some allegations, Heard and McKinney failed to provide probative evidence. Based on the record and deferring to the credibility assessment of the judge, the court affirmed the decision of the lower court.

State v. Hedtke, No. A03-590 (Minn. Ct. App. Apr. 13, 2004) (UNPUBLISHED).
Carver County, Judge Philip T. Kanning

There is sufficient evidence to support a harassment conviction and HRO violation when various mailings are sent to the victim's friends and family by the respondent offender. The harassment statute does not require materials to be directly sent to the victim. In this case, the HRO prohibited both direct and indirect contact with the victim, so the mailings, while sent directly to others, were intended to reach the victim indirectly and thus violated the HRO.

***Heikkila v. Dietman*, No. A15-2022 (Minn. Ct. App. June 20, 2016) (UNPUBLISHED)**
Lake County, no judge reported

Appellant Dietman learned that his estranged wife, K.D., was in a romantic relationship with respondent Heikkila. Heikkila was granted a temporary *ex parte* HRO and scheduled a hearing. At the hearing, the district court excluded testimony about when appellant became aware of

salacious details about K.D. and respondent. The district court found reasonable grounds to believe appellant harassed respondent by multiple threats through a third party, and that the nature of the threats supported a reasonable need to include respondent's minor children in the HRO.

Dietman appealed, arguing that the evidence was not sufficient to issue the *ex parte* HRO. The Court of Appeals found that because the *ex parte* HRO was not a final order affecting appellant's rights, it was not appealable. Dietman argued that the district court erred in excluding testimony about appellant's knowledge of salacious details of K.D.'s relationship with respondent. The Court held that appellant would only be entitled to a new hearing if he could demonstrate that excluding this testimony was prejudicial error; an evidentiary error is prejudicial only if the error might reasonably have changed the outcome. Dietman next argued that the evidence did not support issuance of the HRO. The Court found that the evidence supported the district court's finding that appellant made repeated, intrusive, or unwanted acts and words, and respondent's belief that he was threatened.

Dietman then argued that the district court erred by naming respondent's children as victims in the HRO. The Court found that the district court abused its discretion by including respondent's minor children, because children may only be included in an HRO if they too are victims of harassment. The Court reversed the portion of the HRO regarding the minor children, and remanded for proceedings consistent with their opinion. The Court of Appeals affirmed in part, reversed in part, and remanded.

Helget v. Meier, No. A13-0495 (Minn. Ct. App. Oct. 15, 2013) (UNPUBLISHED).
Brown County, no judge reported

During a weekend conference for South Central College in North Mankato's student senate, Dustin Meier sent Deanna Jo Helget 76 threatening or angry text messages and voicemails. Helget told Meier he was scaring her and that he needed to leave her alone. Helget filed a petition for a HRO against Meier. The district court issued a TRO and held an evidentiary hearing. Meier admitted that he sent the text messages and voicemails. The district court issued an HRO. Meier appealed. The Appellate Court affirmed the district court's issuance of the HRO. The harassment statute does not state that a petitioner must allege an immediate and present danger of harassment to obtain an HRO and the fact that the legislature included a separate subsection pertaining to TROs indicated the legislature's decision not to require that allegation for issuance of an HRO, which is governed by a different statutory subsection.

Herbst v. Herbst, No. A05-945 (Minn. Ct. App. Feb. 7, 2006) (UNPUBLISHED).
Stearns County, Judge Richard T. Jessen

A petition for an HRO was filed by former wife against husband's new wife. The new wife sent letters to the old wife's employer, seeking to have the old wife fired. Because the record supported the district court's findings that the new wife sent two letters and an email to the old wife's employer and because these letters were intended to interfere with the old wife's privacy, the district court did not abuse its discretion in issuing an HRO.

Higbee v. Graham, No. C7-97-1588 (Minn. Ct. App. Dec. 30, 1997) (UNPUBLISHED).

Hennepin County, Judge Willard Lorette

Graham filed for and received an HRO against Higbee. For the hearing, Higbee had subpoenaed people who did not appear. The district court refused to enforce the subpoenas, took testimony from the parties and issued the HRO. Higbee appealed, claiming, among other things, that she was prohibited from presenting a defense because the judge would not enforce the subpoenas. The appellate court disagreed. The evidence Higbee wanted to present was not relevant to the harassment proceeding and would not have rebutted Graham's testimony. The trial court has broad discretion on what evidence will be admitted.

Hilligan v. Schulte, No. C9-99-477 (Minn. Ct. App. Aug. 31, 1999) (UNPUBLISHED).
Dakota County, Judge Karen Asphaug

Michael is the son of Raymond, who lives at Bethesda Lutheran. Bethesda Lutheran's administrator filed for and received an HRO on behalf of Bethesda Lutheran against Michael. Michael admitted to: (1) telling the administrator that the nursing staff taking care of his father "should be afraid" and that he was "going to get" the heads of two employees; (2) writing the administrator a letter that identified the seven employees who were afraid of him and stated that they "have a right to be" and (3) preventing a nurse from leaving his father's room and making threatening gestures toward the nurse. Michael appealed, claiming Bethesda Lutheran is not a person and thus cannot receive an HRO. The appellate court found that a corporation is considered a "person" for the purposes of the harassment statute.

State v. Hoffman, No. C3-02-809 (Minn. Ct. App. Sept. 10, 2002) (UNPUBLISHED).
Ramsey County, Judge Gary W. Batian

Diane Hoffman pled guilty to an HRO violation and to engaging in a pattern of harassing conduct; she was sentenced on each conviction. On appeal, she contended she should not have been sentenced separately for the two convictions because all of the harassing behavior was a single behavioral incident and that she was denied due process because she thought the pattern of harassing conduct charge would include the April 2000 behavior. The court held Hoffman was properly sentenced separately because her convictions were not based on a single behavioral incident. The court reasoned that the conduct of April 2000, resulting in Hoffman's HRO violation, was separate and distinct from the conduct that supported her pattern of harassing conduct charge, consisting of seven specific, isolated events involving multiple victims and different locations. Similarly, the court held that Hoffman was not denied due process because the amended complaint did not include the conduct of April 2000 and the district court's order stated that conduct was not part of the pattern of harassing conduct conviction. The court reasoned from these facts, together with the fact that Hoffman was represented by counsel and counsel failed to clarify the dates included in the "pattern" of conduct, Hoffman was not denied due process.

Holland v. Yang, No. A09-2321 (Minn. Ct. App. Aug. 10, 2010) (UNPUBLISHED).
Scott County, no judge reported

Respondent Ann Holland, a court reporter, met appellant Neng Yang briefly at a deposition for Yang in an unrelated action. After a brief interaction, appellant became convinced respondent was a government spy and began engaging in harassing behavior towards respondent. Appellant's behaviors included: sending letters to attorneys, agencies, and associates of Holland's asking for her

home address; obtaining her social security number and unlisted telephone number; and writing the letter "A" in blood on her car. As a result, respondent obtained a HRO against appellant prohibiting him from having any contact with her or third parties associated with her. Appellant's behaviors persisted and respondent obtained a new HRO for fifty years after the first one expired. Appellant was not denied his due process rights by not being appointed a public defender because it was a civil proceeding. In addition, an evidentiary hearing is not required when issuing a TRO.

Holth v. Haugen, No. C9-00-1104 (Minn. Ct. App. Feb. 27, 2001) (UNPUBLISHED).
Todd County, no judge reported

Haugen and Holth were co-workers. Holth felt uncomfortable around Haugen. She complained to their supervisor, who transferred Haugen. Holth also petitioned for and was granted a restraining order. Haugen violated the order and pled guilty to criminal charges. Haugen then filed a motion to modify or dismiss the order because it was too vague. Holth moved to extend the order for another year. The court extended the order without any modification. Haugen appealed. Minnesota law requires a hearing to determine whether a restraining order is appropriate, complete with the parties' right to present and cross-examine witnesses and produce documents. The appellate court concluded that the hearing regarding the modification and extension of the order did not meet these procedural requirements because Haugen was not allowed to challenge Holth's statements.

I

Igo v. Chernin, 540 N.W.2d 913 (Minn. Ct. App. 1995).
Ramsey County, Judge M. Michael Monahan

Igo received a temporary HRO against Chernin and the district court set a date for a hearing; when the sheriff was unable to personally serve Chernin, notice of the hearing was published. Chernin subsequently took Igo's deposition. At the hearing, Chernin argued the court lacked jurisdiction because he had not been properly served but the court rejected that argument and issued the HRO. The Minnesota Court of Appeals upheld the HRO, holding that a respondent waives the defense of inadequate service once he or she files notice of deposing a petitioner.

Inskeep v. Moore, No. A15-0450 (Minn. Ct. App. March 28, 2016) (UNPUBLISHED)
Goodhue County, no judge reported

Mr. & Mrs. Inskeep and their two minor children were issued an *ex parte* HRO. Following an evidentiary hearing, the district court issued a two-year HRO prohibiting Moore and Walk from harassing or having direct or indirect contact with the Inskeeps or their children.

Moore and Walk appealed, arguing that the district court's findings of fact were unsupported by evidence and that the court abused its discretion by issuing the HRO. The Court of Appeals found that the evidence in the record supported the district court's findings. Appellants argued that the transcript was incomplete. The Court denied their request to clarify the transcript on appeal, because they had not attempted to correct the transcript before the district court. Appellants argued that the district court did not give weight to their testimony. The Court of Appeals deferred to the district court's credibility determination. Appellants suggested their behavior did not rise to the level of harassment required in the statute, but the Court of Appeals did not consider this argument because appellants provided no authority or argument. The Court of Appeals affirmed.

ISD#381 v. Olson, No. C9-00-888 (Minn. Ct. App. Jan. 16, 2001) (UNPUBLISHED).
St. Louis County, no judge reported

Olson met with two teachers to discuss issues pertaining to his son. During the meeting he yelled at the teachers. The principal sent Olson a letter asking him to control his anger and to refrain from yelling at staff. Olson sent a return letter that was characterized as threatening. Olson met with the principal. During the meeting, he shouted at the principal a number of times. After he left the meeting, the principal called 911, as she felt threatened. The school then filed for and received an HRO. Olson appealed, claiming that he was denied a jury trial, that there were insufficient grounds for the HRO, and that he was denied the right to fully cross-examine witnesses. The appellate court said that Olson's actions constituted harassment, that cross-examination was appropriately limited to the subject matter of direct examination, and that Olson had no right to a jury trial. Trial by jury is a right for defendants facing more than 6 months jail time. The HRO was upheld.

J

Jackson v. Love, Nos. A10-1954; A10-1955; A10-1956; A10-1957 (Minn. Ct. App. Aug. 1, 2011) (UNPUBLISHED).
Dakota County, no judge reported

Appellant Jackson and respondents White and Love lived in the same townhouse complex. In July 2010, appellant petitioned the district court for a HRO against respondents, alleging respondents had been threatening to put flour and sugar in her gas tank, pile dirt in her back porch, made harassing phone calls and threatened they would flatten her car tires. In August 2010, respondents petitioned for HROs against appellant alleging appellant falsely accused White of placing flour in appellant's gas tank; made harassing remarks towards White and her daughter; made White and her daughter fear for their lives; and repeatedly threatened and harassed Love and her children. At the evidentiary hearing, the district court heard testimony from each of the parties. The district court concluded there was only enough evidence to issue a HRO against appellant on behalf of respondents. Appellant argued the district court erred in finding respondents' testimony more credible. The court of appeals stated the credibility of a witness is left to the discretion of the district court and affirmed the issuance of the HRO against appellant.

***Janecek v. Rosenthal*,** No. A16-1885 (Minn. Ct. App. June 12, 2017) (UNPUBLISHED).
Hennepin County

Appellant Janecek and Respondent Rosenthal are next-door neighbors who share a driveway. There have been several property disputes between the two, to the point that Rosenthal installed security cameras outside his home, pointed directly at Janecek's home. Janecek filed an *ex parte* HRO, alleging that Rosenthal had constantly videotaped her home for 24 hours a day for the previous six years, and her request asked the court to order Rosenthal to stop recording her home. The district court dismissed this petition for lack of merit, and Janecek appealed. Because the district court dismissed Janecek's petition without a hearing, the Court of Appeals reviewed whether or not there lies a sufficient claim for relief. The Court found that there does exist a narrow claim for relief under the harassment statute, as the cameras in question were pointed toward the windows of her home, leading to her fear being videotaped in her home. Because Minnesota precedent has not addressed this precise issue, the Court of Appeals relied upon *Lake v. Wal-Mart* and *Florida v. Jardines* to

determine that the area surrounding the home is part of the home. Based on this precedent of invasion-of-privacy tort law, the Court concluded that the district court erred in failing to hold a hearing for Janecek's petition, which does indeed set forth a legally cognizable claim of harassment. The Court reversed and remanded, with the instruction that the district court should hold the hearing to determine whether, in context, the videos amounted to "objectively unreasonable conduct" under the harassment statute.

Jankovsky v. Anderson, et al., No. A12-0590 (Minn. Ct. App. Dec. 10, 2012) (UNPUBLISHED).
Scott County, no judge reported

An HRO can be issued due to conduct that has a substantial adverse effect on one's safety, security or privacy or causes an objectively reasonable belief of such an adverse effect. Because mother had an OFP against her husband, her in-laws helped facilitate the exchange of children during supervised parenting time. Mother was granted an HRO against her in-laws due to their harassing behavior. The court found that the in-laws frightened mother with such threatening behavior as attempting to keep her from getting her children by keeping vehicle doors locked, taking videos and photographs of her and the children, asking for her confidential address, and threatening repercussions for respondent's behavior. This behavior supported the issuance of the HRO which was affirmed by the appellate court.

Jensen v. Walsh, No. C9-96-2361 (Minn. Ct. App. June 17, 1997) (UNPUBLISHED), *superseded by* Minn. Stat. § 609.478 subd. (1)(a)(1) (1998).
Washington County, Judge John E. Cass

The Jensens and Spooners filed for an HRO against the Walshes but their petition was denied because the district court determined the Jensens and Spooners failed to establish the Walshes intended their conduct to harass. On appeal, the Jensens and Spooners argued the district court erroneously held they had to prove specific intent to harass. The court held specific intent to harass was a necessary element of the HRO statute because the plain language required specific intent on the part of the alleged harasser.

Johnson v. Arlotta, No. A11-0630 (Minn. Ct. App. December 12, 2011) (UNPUBLISHED).
Hennepin County, no judge reported

Appellant Johnson obtained a temporary HRO against respondent Arlotta, her former boyfriend. Appellant consented to a six-month HRO prohibiting him from having any contact with respondent, visiting her place of residence and work, or committing any acts "intended to adversely affect [her] safety, security, or privacy." Two days after the HRO was issued appellant created a blog titled, "Help Ann Johnson." The blog alleged respondent had been sexually and physically abused throughout her life and as a result suffered from mental illness. Appellant promoted and publicized the blog by sending emails to respondent's family and friends, her employer, a local news station, her child's father, and members of the community respondent did not know. As a result, respondent obtained a fifty-one year HRO which prohibited appellant from contact respondent directly or indirectly and ordered appellant remove the blog. Appellant argued his blog and emails to third-parties did not constitute harassment because he was not contacting respondent directly. To the contrary, indirect contract with respondent is a direct violation of the statute because appellant's actions constituted repeated incidents of intrusive or unwanted acts. The court of appeals affirmed the issuance of the HRO but reduced it to fifty years because the statute limits it to this length.

Johnson v. Berg, No. A07-1749 (Minn. Ct. App. Aug. 26, 2008) (UNPUBLISHED).
Hennepin County, no judge reported

Johnson, a nurse at Walker Methodist, where Berg's mother was admitted, obtained an HRO against Berg. Berg argues the district court abused its discretion by issuing a temporary HRO absent immediate and present danger of harassment. However, the temporary HRO had lapsed by the time of the appeal, so any challenge to its legality is moot. Berg also argues the record is insufficient to support the HRO. While Berg argues she was merely advocating for her mother's care, she did so in a harassing manner, and the district court did not abuse its discretion in issuing the HRO. Finally, Berg argues the conduct on which the HRO is based is protected by state and federal law, 42 C.F.R. § 483.10(j)(1)(vii) (2008), which is intended to "promote the interests and well-being of the patients and residents of health care facilities." However, those rights afforded to patients and residents do not extend to a third party who is not an appointed guardian.

Johnson ex rel. Johnson v. Cobb, No. C8-92-1323 (Minn. Ct. App. Mar. 9, 1993) (UNPUBLISHED).
Kandiyohi County, Judge Allan D. Buchanan

Steven Johnson filed a petition for an HRO against the Cobbs on behalf of LaRose Johnson, a vulnerable adult. LaRose testified at the hearing that she no longer wanted the Cobbs calling her at the group home because she feared losing her living arrangements there and because she wanted to stop associating with the married couple and find her own boyfriend. The district court granted the HRO petition and the Cobbs appealed, arguing there was insufficient evidence to support the HRO. The court held LaRose's testimony was sufficient to support the HRO; her testimony clearly expressed her desire to end all socialization with the Cobbs and seek out new friendships.

***Johnson v. Koski*, No. A15-0610 (Minn. Ct. App. Dec. 14, 2015) (UNPUBLISHED)**
Hennepin County, no judge reported

Johnson obtained an ex parte HRO against Koski. Koski was not served with the HRO until seventy days after it was issued, well after the 45-day period during which a respondent is permitted to request a hearing. However, the district court granted Koski's motion for an evidentiary hearing because of the late service. During this hearing, the district court concluded that Johnson failed to provide sufficient facts demonstrating Koski engaged in harassment, and dismissed the HRO.

Johnson appealed, arguing the district court erred by permitting Koski to have an evidentiary hearing. The Court of Appeals used the factors that allow a district court to open a default judgment, concluding that Koski had a reasonable defense, a reasonable excuse for failure or neglect to answer, due diligence after notice, and no prejudice to the other party. The Court of Appeals also held that the district court did not abuse its discretion by determining that there was not sufficient evidence to sustain the HRO. The Court of Appeals affirmed.

Johnson v. Luppino, No. A05-1557 (Minn. Ct. App. May 30, 2006) (UNPUBLISHED).
Scott County, Judge Diane M. Hanson

The district court may issue an HRO if it finds "reasonable grounds to believe the respondent has engaged in harassment." Appellants contacted the hospital where respondent worked as a nurse,

alleging respondent had drug-related problems and mental health problems. The hospital staff investigated the claims and determined they were unfounded. The district court ruled that multiple contacts with respondent's employer in order to provide misinformation supported an HRO. On appeal, appellants argued that the evidence was insufficient to support an HRO, that the court received inadmissible hearsay, and that the court considered evidence outside the record.

The appellate court determined that the testimony heard at trial was not hearsay because the court relied on the information not for its truthfulness, but merely to establish that statements had been made. Further, although the district court drew inferences, they did not rely on facts outside the record in determining the hospital investigation had adverse effects on respondent's privacy.

Johnson v. Michels Property Groups, LLC, No. A09-2315 (Minn. Ct. App. Sept. 14, 2010) (UNPUBLISHED).
Kandiyohi County, no judge reported

Appellants Terry and Marjorie Johnson have lake property next to respondent Kelly Michels. Appellants petitioned for an HRO after respondent installed eight cameras on her property which appellants alleged were intrusive and pointed to private areas of their home. Appellants contacted the police who came to survey the properties and take pictures. After hearing the testimony from both parties and the officer who came to the properties, the district court dismissed the motion for an HRO. The district court concluded the cameras only captured images that a neighbor would be able to view of appellants' property. On appeal, the court denied to read the criminal definition of harassment in conjunction with the HRO statute. The HRO statute's definition stands alone.

Johnson v. Weibel, No. A14-1663 (Minn. Ct. App., June 8, 2015) (UNPUBLISHED).
McLeod County, no judge reported

Johnson filed a HRO against Weibel, alleging that Weibel repeatedly photographed his business operations and nearly drove his car into him. Johnson did not allege that he sustained physical harm when Weibel nearly drove his car into him or that Weibel intended to harm him. Without these allegations, the Appellate Court stated that the incident was not a physical assault. However, the Appellate Court determined that this incident would be considered one of the many intrusive or unwanted acts within the definition of harassment. The Appellate Court modified the district court's HRO to reflect that the incident was an intrusive or unwanted act. Sufficient evidence supported the district court's issuing of the HRO.

Jones v. Wilson, No. C4-01-2218 (Minn. Ct. App. June 25, 2002) (UNPUBLISHED).
Ramsey County, Judge Lawrence Cohen

Jones filed a harassment petition for himself and on behalf of his two minor children against the ex-boyfriend of Jones' wife. Jones alleged that Wilson attempted to hit the children, who were riding bicycles, with his car and frequently followed the children and watched the Jones' home. On appeal, Wilson attempted to show the court that it was he who was being harassed because he was denied access to his personal belongings and because of damage to his car. Because none of this was presented at the original hearing, the court found that Wilson had followed and stalked Jones and the children and that issuance of the HRO was proper.

Juberian v. Hail, No. A16-2061 (Minn. Ct. App. Sept. 5, 2017) (UNPUBLISHED)
Rice County, no judge reported

Tami (social worker) applied for a HRO for Children in Need of Protection or Services involving Nancy's three grandchildren and her own following multiple incidents involving Nancy. After children were placed in foster care, appellant was allowed supervised visitation, but visitation was cancelled after appellant came to the children's events and visits under the influence of drugs and alcohol. She continued to come to recreational events despite cancelled visitation. Appellant also made one threatening gesture to respondent. The appellate court reversed the HROs on the ground that there was insufficient evidence on the record to show repeated contacts, and no indication that the one-time gesture had substantial adverse effect on respondent's individual safety.

K

Keenan v. Oslund, No. C7-00-1358 (Minn. Ct. App. Feb. 20, 2001) (UNPUBLISHED).
Ramsey County, no judge reported

Keenen filed for and received an HRO against Oslund. Keenan's journal notations formed the basis for the order. She had noted Oslund driving by the house, following her car, peering in windows, coming on the property and calling and hanging up the phone. This had gone on for over two years. A neighbor testified to an incident during which Oslund was on the deck and another in which they had seen Oslund jog by the house and into the yard. Keenan's husband testified to seeing Oslund drive by the house. Oslund appealed the order, claiming that the acts were not harassment and that there was no proven intent to affect safety, security, or privacy. The appellate court held that even though the trial court did not make explicit findings regarding intent, there was a reasonable basis to infer intent to harass based on Oslund's conduct.

Khan v. Ansar, No. A08-0477 (Minn. Ct. App. Sept. 9, 2008) (UNPUBLISHED).
Dakota County, no judge reported

A father's harassment of his child's mother provides a sufficient basis for the district court to restrict his parenting time because of its effect on the child. The district court found that the father had a history of physical abuse, aggressive controlling behavior toward the mother, psychological threats aimed at controlling the mother, and intimidation. The father had cut himself with a knife in front of the mother and child and made numerous threats against the mother and her family through email. The district court did not abuse its discretion by issuing an HRO and restricting the father's parenting time. However, the district court did abuse its discretion by modifying custody without an evidentiary hearing. An order that modifies custody should be based on a hearing in which witnesses are cross-examined. A district court is required under Minn.Stat. § 518.18 to conduct an evidentiary hearing if the party seeking to modify a custody order makes a prima facie case for modification. The district court also erred by awarding attorney fees without first issuing an order to show cause and allowing the father time to respond.

Koening, et. al., v. Koening**,** No. A12-2282 (Minn. Ct. App. Sept. 3, 2013) (UNPUBLISHED)**.**
McLeod County, no judge reported

Father Arnold Koening, mother Andrea Koening and son Michael Koening owned Koening Farm Corporation. Arnold went to the commercial property to "take possession of the power panel" that

controlled power on both the farm and Michael's home by cutting a padlock securing the panel and removing fuses. Michael recorded Arnold when he saw Arnold at the panel. Michael did not say anything or gesture when Arnold approached him. He continued recording, but backed his truck away from Arnold. Michael said that Arnold "slapped" the vehicle aggressively. Following the power panel incident, Arnold and Andrea requested a Harassment Restraining Order (HRO) against Michael. The district court held a hearing, and granted the petition under Minn. Stat. § 609.748, subd. (1)(a)(1). On appeal, the Appellate Court concluded that the district court erred in granting the petition for the HRO. The Appellate Court agreed with Michael, saying that he was not engaging in unreasonable conduct. It said the evidence does not show Michael's conduct had a substantial adverse effect on the respondent's safety, security or privacy; or that they had an objective reasonable belief of such an effect. There was no evidence he was acting aggressively.

***Knoernschild, et al., v. Halverson*, No. A15-0909 (Minn. Ct. App. April 11, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

Stendal, Vice President of Omega Management, was the property manager for the Elm Creek Courthome Association. Halverson resided in a home governed by the association. Stendal and members of the Omega board of directors obtained HROs against Halverson. Knoernschild represented Stendal and the board members. After the HROs were issued, Halverson sent emails to Knoernshild alleging fraudulent affidavits, and made various public YouTube video accusations directed towards Knoernshild, Stendal, and Omega. Stendal, the board, and Knoernshild brought a defamation action against Halverson seeking damages and an order requiring him to remove statements and videos from the Internet, and enjoining him from publishing or communicating any false statements about respondents. The district court issued an order directing Halverson to respond to respondents' interrogatories with "full and substantive answers" and to produce the documents requested by respondents within ten days. Stendal and the board argued that they were entitled to summary judgment on the merits and because Halverson did not comply with the discovery order. During a district court hearing, the summary-judgment motion was granted.

Halverson appealed. Halverson first argued that the fifteen minutes he was allowed for oral argument at the summary judgment hearing was insufficient to address all the evidence in the case. The Court stated the district court has discretion to limit the time allowed for oral arguments, and even if they error, Halverson is only entitled to reversal of the summary judgment if the error was prejudicial. Since each party was limited to fifteen minutes, it was not prejudicial. Halverson next argued that the district court erred by disallowing the evidence in his 2015 affidavit because he "responded to interrogatories to the best of his ability." The Court of Appeals stated that under Minn. R. Civ. P. 37.02(b)(2), the district court may prohibit a person from introducing designated matters into evidence if a party disobeys a discovery order. Since the district court did not err in granting summary judgment, the Court of Appeals did not need to address the remaining issues raised by the parties. The Court of Appeals affirmed.

Knute v. Vanoverbeke, No. C6-02-786 (Minn. Ct. App. Dec. 17, 2002) (UNPUBLISHED).
Scott County, Judge Klaphake

Vanoverbeke appealed issuance of an HRO against him on several grounds. First, he argued that the evidence was insufficient to issue an HRO. The appellate court found that because Knute testified she was frightened by Vanoverbeke's persistent attentions, she informed him that the

attentions were unwanted, and because the evidence showed multiple voicemail messages, emails, and a vaguely threatening note, the issuance of an HRO was justified and not an abuse of discretion. Appellant Vanoverbeke further argued that the restrictions in the HRO were overbroad because they require that he work the night shift to avoid contact with Knute, who works for the same employer. The appellate court found that while inconvenient, Vanoverbeke's essential interest in maintaining his employment has been protected, therefore the HRO was not overbroad. The Court of Appeals rejected Vanoverbeke's challenge to the admission of transcripts of voice-mail messages in lieu of the actual recordings, finding that while the admission of the tapes themselves would have been preferable, the district court's acceptance of the transcripts was not an abuse of discretion, especially when considering Vanoverbeke admitted to making the calls and did not object to the content of the transcripts.

Krebs v. Faus, No. A09-1799 (Minn. Ct. App. Aug. 10, 2010) (UNPUBLISHED).
Hennepin County, no judge reported

Respondent Jessica Krebs obtained a HRO against the father of her children, appellant Fritz Faus, after it was found by the district court he had violated a previous one. The court of appeals upheld the new HRO because it determined its issuance was based on conduct that occurred during the prior HRO but was not supported in the prior HRO. In addition, the district court made specific findings about events that occurred in May 2007 and May 2008 based on testimony and documents. The court found these findings to be sufficient and appropriate based on the evidence on the record.

Kreuz v. Pernat, No. C1-00-1839 (Minn. Ct. App. Apr. 24, 2001) (UNPUBLISHED).
St. Louis County, Judge Jeffrey S. Rantala

Before a court will issue a restraining order, there must be either a single physical or sexual assault or more than one instance of unwelcome contacts. An owner of property located next to a bar was upset because drivers of all-terrain vehicles (ATVs) often drove across his property while on their way to the bar. The property owner went to the bar to effectuate his citizen's arrest powers. The owner of the bar, along with several patrons, told him to get off the property in a threatening manner. The property owner claimed that this had a psychological impact on him and filed for an HRO against the owner of the bar. The district court denied his request without even holding a hearing. The appellate court upheld this decision, reasoning that before an HRO can be issued there must be more than just one incident of threatening behavior.

***Krupicka v. Hassinger*, No. A15-1231 (Minn. Ct. App. April 4, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

The district court granted an *ex* parte OFP on behalf of Krupicka. In lieu of an evidentiary hearing and/or OFP, the parties agreed to the issuance of an HRO. The HRO ordered Hassinger to refrain from harassing Krupicka and her children. The court also directed Krupicka not to harass Hassinger. A year later, Hassinger moved for dismissal or modification of the HRO. The court heard arguments but did not take testimony, and denied the motion.

Hassinger appealed, arguing that Krupicka's failure to abide by the spirit of the HRO makes the judgment ordering issuance of an HRO no longer equitable. The Court of Appeals noted that Krupicka was not bound by the HRO in the first place. The Court also stated that when parties have

agreed to a judgment, the court may set it aside if a party demonstrates fraud, mistake, or absence of consent, but because none of these were alleged, there was no basis to do so. Hassinger also argued that the original order was an injunction and not an HRO because the district court did not make findings of harassment. The Court of Appeals did not find this supported by the record, noting that that a stipulation takes the place of evidence. Hassinger argued that he was entitled to an evidentiary hearing on his motion to vacate or modify the HRO. The Court found that the district court did not abuse its discretion by refusing to hold an evidentiary hearing because the supporting affidavit was speculative and vague. The Court of Appeals affirmed.

Kush v. Mathison, 683 N.W.2d 841 (Minn. Ct. App. 2004).
St. Louis County: Judge Carol M. Person

Respondent-Kush filed for an HRO against his neighbor, appellant-Mathison. The district court issued the HRO. On appeal, Mathison claimed the district court abused its discretion by granting the HRO because Mathison's statements to Kush did not constitute harassment.

The Court of Appeals found sufficient evidence supported the district court's findings that Mathison's conduct constituted "repeated incidents" of harassment against Kush, so as to support issuance of an HRO. The Court of Appeals also found sufficient evidence to support the district court's findings that Mathison's behavior had a substantial adverse effect on the safety, security and privacy of Kush. At trial, when asked if Mathison had made any phone calls that Kush considered to be threatening, Kush specifically testified to incidents that caused him fear and apprehension; incidents involving threatening phone calls and Mathison entering Kush's property uninvited and pounding on his door. Kush also noted that Mathison's behavior scared and intimidated his family.

Further, Kush's testimony that "he could handle" the effects of Mathison's behavior did not negate the evidence that appellant's conduct was unwanted, intrusive, and had a substantial adverse effect on Kush. The Court of Appeals found Mathison's calls and statements constituted harassment, and therefore affirmed the district court's decision to grant the HRO.

L

Lang v. Dunlap, No. C1-03-60 (Minn. Ct. App. Sept. 16, 2003) (UNPUBLISHED).
Cook County, no judge reported

The district court issued Lang a one-year ex parte OFP against Dunlap, which was extended a year later. Subsequently, the district court granted Dunlap's motion for reconsideration and held a hearing. The district court heard testimony then issued an HRO against Dunlap, denying his motion to dismiss and motion for reconsideration. On appeal, though the court found sufficient evidence to support the existence of repeated, unwanted contact, there was insufficient evidence the contact had a substantial adverse effect on the safety, security, or privacy of Lang. Because not all the elements necessary to find harassment were met, the court reversed and remanded.

Larson v. Carrillo, No. A03-1337 (Minn. Ct. App. May 11, 2004) (UNPUBLISHED).
Dakota County, Judge John S. Connolly

Daniel Larson filed for an HRO against Carrillo. The HRO was granted to both Daniel and Sandra Larson. Carrillo appealed, stating that because Sandra did not sign the petition or affidavit, the

district court lacked jurisdiction to issue the HRO on Sandra's behalf. The appellate court affirmed, holding that the HRO was legitimate because (1) the petition listed Sandra as a petitioner; (2) the accompanying affidavit listed specific acts of harassment against Sandra; (3) Sandra testified at the hearing, supplying testimony about acts against her; (4) the district court forbade Sandra and Daniel from testifying about acts of harassment directed toward the other, and (5) Sandra testified that she understood that both signatures were not needed when filing a joint petition.

Larson v. Ethier, No. C0-95-1573 (Minn. Ct. App. Apr. 2, 1996) (UNPUBLISHED).
Hennepin County, Judge Franklin J. Knoll

Kathleen Larson and Steven Ethier were co-workers. Larson sought and obtained an HRO based upon his past conduct, which included stalking Larson, threatening to damage Larson's and her male cohabitant's cars, and mailing her an article on the pitfalls of cohabitation. Ethier argued at the court of appeals that the HRO statute was a content-based restriction of his freedom of speech under the First Amendment to the U.S. constitution. However, the court held the HRO was a content-neutral restriction because it prohibited *any* contact with Larson, without regard to the content of the speech. A content-neutral restriction is a constitutionally permissible time, place, and manner restriction if it serves a significant government interest and leaves open ample alternative channels for communication of the information. The court reasoned the state had a significant interest in protecting the tranquility of the home and the HRO was narrowly tailored since it prohibited only communication with Larson, an unwilling listener, and allowed Ethier to otherwise express his views on cohabitation outside of marriage.

Latham v. Latham, No. A11-1085 (Minn. Ct. App. March 5, 2012) (UNPUBLISHED).
Dakota County, no judge reported

Respondent-mother obtained a harassment restraining order (HRO) against appellant-father after she alleged appellant followed her, pursued and stalked her, made uninvited visits and harassing phone calls, broke into her residence, and stole her property. Appellant argued the district court abused its discretion by issuing the HRO because the record did not support it. The court of appeals disagreed and found the record supported a finding appellant stalked or followed respondent to work and their daughter's orthodontist appointment. The record also established appellant made harassing phone calls to respondent and members of her family, despite respondent's many requests for appellant to communicate with her only by email.

***LeBlanc v. Lee*, No. A15-1006 (Minn. Ct. App. March 7, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

LeBlanc petitioned the court to prevent Lee from having contact with her or two of her children. An *ex parte* HRO was granted. Post evidentiary hearing, the HRO was vacated, with the finding that LeBlanc had not shown, by a preponderance of the evidence, that Lee committed acts which substantially and adversely affect safety, security, or privacy.

LeBlanc appealed, arguing that the district court erred by finding that Lee did not engage in harassment and by denying the petition. The Court of Appeals found that because there was no evidence of physically assaultive conduct, LeBlanc needed to show that Lee engaged in "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." The

Court of Appeals found some incidents did not implicate privacy because they occurred in a public place, that at least one incident was not substantially adverse, a lack of threatening conduct, and no attempts to circumvent school or football program authority. The Court of Appeals found that the district court had an adequate evidentiary basis to find Lee's conduct did not have a substantial adverse effect.

LeBlanc alleged three errors in the district court's finding of facts. The first was that the district court erred by finding that when Lee went to one of the child's schools, he was not allowed to visit with the child. The Court of Appeals found that LeBlanc did not show that this erroneous fact made a difference in the outcome of the case, and dismissed it as harmless error. The second, that the district court did not evaluate information about prior protective orders LeBlanc had against Lee, the Court deferred to the district court's ability to evaluate and weight the evidence, holding that the district court did not err in its decision. Third, LeBlanc contended that the district court erred by relying on its finding that Lee loves the children. The Court of Appeals wrote that this finding was relevant as it concerns the necessary question of whether Lee "intended to have a substantial adverse effect" on the children. The Court of Appeals affirmed.

***Lee-Barrios v. Vacko*,** No. A16-2084 (Minn. Ct. App. October 30, 2017) (UNPUBLISHED)
Ramsey County, no judge reported

Petitioner petitioned for an ex parte HRO against Appellant for sending harassing Facebook messages to her and her daughter and attempting to hack into both of their Facebook accounts. The district court initially denied Petitioner's request for ex parte HRO, but granted it after finding Respondent's testimony credible at the hearing.

Appellant first argued that the district court abused its discretion by granting Petitioner's ex parte THRO after concluding that the initial petition and affidavit was insufficient. However, the court made their initial determination Respondent's evidentiary hearing. Additional facts and details presented at that hearing allowed the court to make a credible determination. Second, the Court found that nothing requires a second affidavit to the initial request for an ex parte HRO if the first is denied or that the Appellant was required to be served before the court makes a decision on request. Third, the Court held that Appellant's actions were sufficient to support a finding of harassment because Appellant intended to cause "an adverse effect" on both Petitioner and her daughter.

***Low v. Yorek*, No. A15-1107 (Minn. Ct. App. April 25, 2016) (UNPUBLISHED)**
Dakota County, no judge reported

Low had an *ex parte* HRO against Yorek. Low and Yorek then reached an agreement that was read into the record. Both parties assented to the agreement under oath, and stated that they understood that the agreement, as read into the record was binding. Low subsequently moved to vacate under Minn. R. Civ. P. 60.02, or alternatively, to amend findings of fact under Minn. R. Civ. P. 52.02. The district court denied these motions.

Low appealed, arguing that the district court should not have adopted the settlement agreement as read into the record, because parties did not agree to the same terms. The Court of Appeals found that the record did not support this claim. Low next contended that the agreement was unenforceable because some of the terms were ambiguous. The Court stated that this argument conflicts with Low's testimony that she understood the agreement and agreed to its terms. Low also

argued that the district court erred in denying her motions under Rules 60.02 and 52.02, but did not identify which provisions of the rule entitled her to relief. The Court of Appeals affirmed.

Lowhorn v. Harstad, No. A05-1471 (Minn. Ct. App. May 30, 2006) (UNPUBLISHED).
Ramsey County, Judge Gary W. Bastian
The parties in this case were neighbors. Harstad attempted to pick fights with and continuously tormented the Lowhorns, repeatedly calling them child molesters. The district court granted the Lowhorns an ex parte HRO and later held an evidentiary hearing, per Harstad's request. The district court found reasonable grounds existed to believe Harstad harassed the Lowhorns and ordered Harstad not to harass or have contact with them, and to stay away from their home and places of employment.

On appeal, Harstad argued that the district court admitted hearsay evidence, that the findings of the district court were contradictory to witness testimony, and that the district court erred in not permitting Harstad to recall Lowhorn as a witness. On the hearsay issue, the appellate court held that the police officer's testimony at issue was offered not to establish the truth of what was stated, but only to establish the officer's understanding of the nature of the Lowhorns' complaint. It was therefore admissible. Further, Harstad did not object to the testimony at trial and hearsay evidence received without objection becomes part of the evidence. With regard to the findings of the district court, the appellate court determined they were not clearly erroneous. Finally, the appellate court, in reviewing the decision of the district court for an abuse of discretion, held that the district court did not err in not permitting Harstad to recall Lowhorn as a witness. The court noted that Harstad cross-examined Lowhorn on the first day of trial and that Harstad's reason for recalling Lowhorn did not relate to the claim against Lowhorn.

Luoma v. Hamm, No. C0-97-1240 (Minn. Ct. App. Dec. 23, 1997) (UNPUBLISHED).
Itasca County, Judge John Hawkinson
HROs do not violate the First Amendment if they are justified and reasonable. Luoma filed a restraining order against Hamm after Hamm sent several threatening letters and faxes to Luoma. The court found that Hamm's threats did affect Luoma's "safety, security, or privacy," and Hamm's First Amendment rights were not violated.

M

Martinez ex rel. Minor Child v. Layland**,** No. A09-403 (Minn. Ct. App. Jan. 5, 2010) (UNPUBLISHED).
Ramsey County, no judge reported

Appellate court affirmed district court's issuance of a HRO, as it found no reason to disturb the lower court's credibility assessments. Respondent Martinez, on behalf of herself and her minor child, petitioned the district court for an HRO against appellant Layland. Respondent testified she had known appellant for some time and respondent had a romantic relationship with appellant's fiancé prior to their engagement.

On review, appellant argued the district court abused its discretion in disregarding the testimony of her finance in which he indicated he and Martinez were just acquaintances and did not have any romantic involvement. Appellant also argued there were no specific findings of harassment.

The appellate court held the record furnished no reason to disturb the district court's credibility assessments. Further, sufficient facts existed to reach the statutory requirements of Minn. Stat. § 609.748. In regards to the district court's oral findings, the appellate court indicated the oral findings adequately satisfied the requirement the district court make specific findings of harassment in order to issue an HRO. Because the statements referred to evidence on the record, with account for witness credibility determinations, it constitutes a finding under Minn. R. Civ. P. 52.01. For this reason, there is sufficient to support the district court's issuance of the HRO.

***Martinez v. Takuanki*,** No. A09-155 (Minn. Ct. App. Dec. 1, 2009) (UNPUBLISHED).
Ramsey County, no judge reported

Minnesota law does not require proof of intent to harass for a court to issue an HRO. Appellant Takuanyi challenges the sufficiency of the evidence relied upon by the district court in granting a HRO, including the district court's exclusion of a police report from evidence, the sufficiency of the evidence to support the restraining order, and the scope of the order's restrictions. Appellant argued the record did not show he intended to harass respondents and the respondents were not credible. Reviewing the issuance of the HRO under an abuse of discretion standard, the appellate court indicated Minnesota law does not require proof of intent to harass for a court to issue a harassment restraining order. For this reason, the district court did not abuse its discretion by excluding the report, the evidence supports the order, and the order was not overly restrictive.

State v. McDaniels, Nos. A04-1901 and A05-401 (Minn. Ct. App. Jan. 3, 2006) (UNPUBLISHED).
Becker County, Judge Thomas P. Schroeder

Despite an HRO preventing her from contacting her ex-husband K.S. and his new wife, McDaniels made harassing phone calls and sent harassing letters to them. This conduct resulted in her being convicted of harassment by electronic mail, harassment by telephone, and an HRO violation. The district court issued consecutive sentences on all three convictions. McDaniels appealed, contending that Minnesota did not have jurisdiction over the dispute, that Becker County was not the proper venue, that her consecutive sentences were erroneously imposed, and that she should not have been sentenced to a separate sentence for the HRO violation.

First, the court determined that Minnesota had jurisdiction over the case under Minn. Stat. § 609.025(1) because McDaniels was in Minnesota while engaging in the harassing conduct. Additionally, under the Violence Against Women Act, 18 U.S.C. § 2265(a) (2000), Minnesota is required to give full faith and credit to protective orders issued in other states and enforce them as if they were issued within their own territory. Because the injunction issued in Arizona against McDaniels was a protective order, the court concluded it had jurisdiction. Similarly, the court determined that Becker County was the proper venue because McDaniels resided there when engaging in the harassing conduct.

Second, the court agreed with the parties that consecutive sentences for her harassment violations were inappropriate under sentencing guidelines because she had no prior felony convictions.

Third, the court considered whether McDaniels should have been separately sentenced on her HRO violation. Under Minnesota law, a defendant who commits multiple offenses against the same victim during a single behavioral incident may be sentenced for only one of those offenses. A single

behavioral incident requires unity of time and place and whether the intent was on a single criminal objective. The court held that the district court improperly sentenced her for both harassment and the HRO violation. The court noted that McDaniels' conduct occurred from July through September of 2003 and reasoned first that her continuous contact by frequent phone calls and e-mails throughout that time period were sufficient to show unity in time. Second, the court reasoned that since the victims were always K.S. and L.S. and the calls and e-mails were all received at their home, establishing unity of place. Finally, the court reasoned McDaniels's intent was simply to harass, demonstrating a single criminal objective. Because McDaniels's conduct constituted a single behavioral incident, the court concluded it was improper to sentence her separately on the HRO violation.

Meeks-Hull v. Mashak, No. A09-2337 (Minn. Ct. App. Apr. 9, 2011) (UNPUBLISHED).
Isanti County, no judge reported

Respondent Meeks-Hull obtained an HRO against her former employer appellant Mashak. Respondent alleged appellant frequently screamed at her while still employed and called her and came to her residence numerous times once she quit. Finally, respondent and her husband chose to move to a different county due to appellant's behavior. At the hearing, both parties gave conflicting testimony about whether or not appellant continued to call respondent and her husband. On appeal, the court determined the district court erred in issuing the HRO because it based its issuance solely on the conflicting testimony. The district court did not provide an explanation as to why some witnesses were deemed more credible than others. The court found the statutory definition of harassment had not been met.

***Meyer vs. Harley*,** No. A16-1304 (Minn. Ct. App. Jan. 23, 2017) (UNPUBLISHED).
Clay County

Appellant Harley and Respondent Meyer dated in 2011 or 2012. Years after their breakup, Meyer petitioned for an HRO after Harley began working in the same building as Meyer. In her petition, she claims Harley sexually assaulted her during the relationship, and after their breakup, he harassed her with threats and unwanted communication. The district court granted the HRO petition, noting that although respondent had not proved her allegation of sexual assault, the court found reasonable grounds to exist to believe Harley harassed respondent in the year after their breakup. On appeal, Harley argued that the district court's factual findings do not demonstrate which specific facts support the allegations. Appellant argued that the HRO was inappropriate because four years had passed since the last claimed incident of harassment. The Court of Appeals determined that there was no reasonable connection between Meyer's current fear and Harley's harassing conduct from four years prior. Reversed.

Miller vs. Fredin, No. A16-0631 (Minn. Ct. App. Jan. 23, 2017) (UNPUBLISHED).
Ramsey County

Appellant Fredin and Respondent Miller dated for approximately one month, after which Miller ended the relationship, but the two remained friends. Shortly after, Fredin began constantly sending Miller messages over a myriad of social media platforms, often the content being demanding, threatening, and generally unsettling. Miller explicitly asked him to stop messaging her, and he continued. She blocked his cell phone and his Facebook, but he continued to find ways to circumvent her attempts to cease contact. He used PayPal, email, Match.com, and public Facebook

messages to try to get in touch with her. Miller filed for an HRO, which the court issued after Fredin continued to violate the terms of the temporary restraining order initially issued. Fredin appealed, claiming the district court failed to make particularized findings of harassment, that the district court did not prove repeated harassment, and that his "open letter" which violated the temporary restraining order did not constitute harassment. The Court of Appeals found that particularized findings were made, harassment was proved, and the "open letter" was not, as he claimed, an expression of his feelings akin to Edgar Allen Poe's *The Raven*. Affirmed.

***Murray v. Schaffer*,** No. A17-2024 (Minn. Ct. App. June 11, 2018) (UNPUBLISHED)
Goodhue County, no judge reported

Respondent requested an ex parte HRO against Schaffer (Appellant) and Siebenaler after a property dispute had involved threats of harm. The district court granted Respondent's HRO request at an evidentiary hearing when it found appellants made uninvited visits to Respondent's home and threatened to burn down his shed. On appeal, Appellant argued that the district court abused its discretion in granting Respondent's HRO petition because the record failed to support a finding of repeated harassing conduct. The Court agreed and found that the single instance of harassing conduct did not justify Respondent's HRO. Further, the Court agreed that, even though the Respondent testified to four other occasions of harassment, the district court did not find any of these to have occurred, and could not be considered as repeated incidents of harassment.

N

Naumann v. Zimmer, No. C7-97-1414 (Minn. Ct. App. Feb. 3, 1998) (UNPUBLISHED).
Anoka County, Judge James D. Gibbs

After 10 years of harassment, Immaculate Conception Church obtained multiple HROs against Zimmer, banning him from the property and ordering no contact with the church pastor and other leaders. When Zimmer continued to harass the church, it sought to amend the existing order and moved to hold Zimmer in contempt. The district court granted the motion to amend but dismissed the contempt claim. The expiration date on the original and amended HROs remained the same.

Zimmer argued that the law of the case doctrine prohibits amendments. The law of the case doctrine generally applies when an appellate court has ruled on a legal issue and remanded for further proceedings; the issues decided become the law of the case and may not be re-litigated in the trial court or reexamined in a second appeal. Unlike *res judicata*, the doctrine of law of the case applies *only* to litigated issues and does not reach issues which could have been but were not litigated. The court held that law of the case doctrine did not apply because the propriety of limiting Zimmer's proximity to church property had not been litigated before. Zimmer also argued that the district court erred in not holding a hearing prior to amending the order. The court held that the necessary hearing requirement was met when the district court first issued the HRO; because the order only amended the original terms but did not extend the time-frame, a separate hearing was not necessary. Finally, Zimmer argued the amended order violated his free speech rights by burdening more speech than was necessary. The court, after noting the HRO was content neutral because it was unrelated to Zimmer's speech content, held that the order's expansion of restricted area was not overly burdensome to his free speech given Zimmer's long history of harassing the church.

State v. Nodes, 538 N.W.2d 158 (Minn. Ct. App. 1995).

Itasca County, Judge John Hawkinson

Kolp's legal guardians obtained an HRO on her behalf against Nodes. Nodes pled guilty to the first HRO violation, and but moved to dismiss the second violation, contending the order was unenforceable because Kolp's guardians lacked standing to petition for the HRO. The district court denied the motion and certified the following question to the Court of Appeals: Can a defendant be prosecuted for the violation of a restraining order that was granted on behalf of an adult ward by her guardian? The court held a defendant can be prosecuted for a violation of an HRO granted on behalf of an adult ward by her adult guardian. The court reasoned any purported lack of standing to obtain an HRO could not be mounted as a collateral attack during proceedings on a violation of that HRO.

***Nygard v. Walsh*, No. A15-1276 & A15-1277 (Minn. Ct. App. February 16, 2016) (UNPUBLISHED)**
Hennepin County, no judge reported

The district court dismissed the Nygard's HRO petitions without a hearing after determining the allegations lacked merit. The Nygards appealed. The Court of Appeals agreed with the district court that the allegations from 2012 were too far removed to support further inquiry into the need for an HRO, and that the remaining allegations from 2013-2015 could not be construed as more than inappropriate or argumentative statements. The Nygards also argued that they were entitled to a hearing under the HRO statute. The Court held that in subdivision 3(a) of the HRO statute, it states "[n]othing in [the statute] shall be construed as requiring a hearing on a matter that has no merit." The Court of Appeals affirmed.

O

Olsen v. Gregor, No. A17-0245 (Minn. Ct. App. Oct. 2, 2017) (UNPUBLISHED).
Washington County, no judge reported

Gregor appeals the district court's issuance of an HRO that prohibits him from harassing or contacting the Olsen's, following a boundary dispute between the neighbors. The parties disagree about the location of the boundary separating their properties, and these disputes have escalated into arguments. Olsen alleges Gregor harassed them at least four times, including screaming at the Olsen's and using his riding lawn mower to propel rocks towards Olsen's property (resulting in injuries). Appellate court affirmed district court's issuance of HRO finding that sufficient evidence was presented of harassment based on the four incidents.

Olson v. LaBrie, No. A11-0558 (Minn. Ct. App. February 13, 2012) (UNPUBLISHED).
Chisago County, no judge reported

Appellant Olson petitioned for a HRO against respondent LaBrie, appellant's uncle, based on family photos and text he posted to Facebook. The district court found the photos and accompanying statements were "mean and disrespectful" but did not constitute harassing behavior and denied appellant's request for a HRO. Appellant argued respondent's posting of the photos on Facebook violated his privacy Minn. Stat. § 609.748, subd. 1(a)(1) and therefore constituted harassment. The court of appeals concluded appellant's privacy argument failed because he argued the court should use tort privacy principles in order to determine if his privacy had been violated under the HRO

statute. However, tort privacy principles may not be applied when attempting to satisfy the harassment statute because the definition of harassment is specifically stated in Minn. Stat. § 609.748. In order to meet the burden for establishing harassment exists, the petitioner must satisfy the elements enumerated in the statute.

P

Pappas v. Koepp, Nos. C3-96-1805 and C3-96-1806 (Minn. Ct. App. July 1, 1997) (UNPUBLISHED).
Ramsey County, Judge Charles A. Flinn, Jr.

Pappas's petition for an HRO against her ex-boyfriend, Koepp, was denied after the district court found no evidence that Koepp had harassed Pappas in any way. Pappas appealed. The court held there was insufficient evidence to support her petition because the facts did not lead to the conclusion that Koepp intended, performed or instigated any encounters with Pappas to harass her. Further, Pappas offered only speculation as to the source of hang-up and threatening calls and car tampering. Given the lack of proof of intent and the speculative links between the outside incidents and Koepp, the court held that the trial court did not abuse its discretion in dismissing the harassment petitions.

***Pascavage v. MacKay*, No. A15-1204 (Minn. Ct. App. March 7, 2016) (UNPUBLISHED)**
Chisago County, no judge reported

Pascavage was granted an HRO, but the district court did not include her children because there was no evidence MacKay harassed them. MacKay appealed, arguing that the evidence was insufficient to support the issuance of an HRO. The Court of Appeals stated that the evidence shows MacKay's repeated acts substantially affected Pascavage's sense of safety and security. The Court of Appeals affirmed.

***Paye v. Kiatamba*,** No. A17-0793 (Minn. Ct. App. February 5, 2018) (UNPUBLISHED)
Ramsey County, no judge reported

Appellant argues that the evidence of the contacts did not support the district court's issuance of an HRO against him. However, the Court found the findings that Appellant had contacted Respondent "on three separate occasions," supported the court's finding because it was intended to have "a substantial adverse effect on [Respondent's] safety, security, or privacy." Although the HRO itself contained only one finding concerning Appellant's impact on Respondent, the district court made oral findings that met the statutory requirement for the HRO.
State v. Persons, 528 N.W.2d 278 (Minn. Ct. App. 1995).
Stearns County, Judge Vickie E. Landwehr

The statute defining violation of an HRO states that a violation of the order shall be referred to the appropriate prosecuting authority for possible prosecution. Minn. Stat. § 609.748, subd. 6(d) (1992). Misdemeanor violations of state law "must be prosecuted by the attorney of the statutory or home rule charter city where the violation is alleged to have occurred." Minn. Stat. § 487.25, subd. 10 (1992). A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless a judge certifies the complaint should not be delayed and the prosecutor is unavailable. Minn.

R. Crim. P. 2.02. The court held the complaint was invalid because St. Joseph's city attorney had no authority to file a complaint on the basis of a violation occurring in St. Cloud.

Peterson v. Johnson, 755 N.W.2d 758 (Minn. Ct. App. 2008).
St. Louis County, Judge Tarnowski

An ex-wife's boyfriend filed a petition for an HRO against the ex-husband. The district court issued the HRO, and the ex-husband appealed. The Court of Appeals held that:

(1) Ex-husband did not "physically assault" ex-wife's boyfriend during an altercation at a convenience store. The ex-husband stepped in the way of the ex-wife's boyfriend while exiting the convenience store and did not allow him to pass. The ex-husband also stuck out his chest and made verbal threats but did not touch the ex-wife's boyfriend.

(2) Ex-husband's observation from four feet away that ex-wife's boyfriend did not have a child safety seat in his vehicle did not amount to harassment. The ex-husband's concern that the ex-wife's boyfriend would be transporting his child in a truck without a safety restraint was objectively reasonable, and there was no evidence that the ex-wife's boyfriend even witnessed the ex-husband looking in his truck.

(3) Ex-husband's telephone call to police after ex-wife's boyfriend had left with ex-husband's daughter to report that ex-wife's boyfriend did not have a child safety restraint in his car did not amount to harassment. The record does not support the conclusion that the ex-husband made the phone call in bad faith or with the knowledge that the ex-wife's boyfriend was not actually in violation of the law. Therefore, the evidence is insufficient to show that the ex-husband engaged in "repeated incidents of intrusive or unwanted acts … that have a substantial adverse effect on the safety, security, or privacy" of the ex-wife's boyfriend as required by Minn.Stat. § 609.748, subd. 1(a)(1)."

***Pikula v. Wynn*,** No. A17-1045 (Minn. Ct. App. December 26, 2017) (UNPUBLISHED)
Crow Wing County, no judge reported

The district court granted Wynn's request for an emergency HRO against Pikula and scheduled a hearing. At the hearing, Respondent offered publicly posted Facebook messages printed from his computer as evidence, to which Appellant's counsel objected to on grounds of foundation and hearsay. The district court, stressing that its intent was efficiency, questioned Respondent and his witness and established that foundation was adequate, and received the exhibits. Appellant's counsel did not object to the questioning. The court granted the HRO. Appellant argues her right to due process was violated. The appellate court found, while the due process argument was not properly before the court, Appellant was given the chance to cross-examine, present direct testimony, and present any other evidence. The transcript did not reveal any obvious due-process violations or obviously improper judicial conduct: the district court's motive was to efficiently move the case along in respect to the court's afternoon calendar.
***Polinsky v. Bolton*,** No. A16-1544 (Minn. Ct. App. May 22, 2017) (UNPUBLISHED).
Hennepin County

Appellant Bolton and Respondent Polinsky dated for several years before ending the relationship in 2009. In the wake of this breakup, both parties alleged domestic abuse, and Polinsky was able to

obtain an HRO against Bolton as a result of profane emails he sent to her. Bolton violated that HRO in 2011. Based on this conviction, when the first HRO expired, the court granted a new one in 2012. When the 2012 HRO expired, Polinsky petitioned for a third, producing evidence that Bolton had started a website where he shared details of her personal life, the prosecutor and judge's names in the HRO hearings, and used this website's Twitter account to harass Polinsky via the "@mention" feature. In addition, Polinsky received a package at a hotel she was staying in, the package containing photocopies of the blog, and Polinsky's criminal records. Bolton denied sending the package. The district court found that the use of Twitter's "@mention" function, and the sending of the package, were sufficient to constitute harassing acts. The district court issued a 20-year HRO, in which it defined prospective acts Bolton may commit that would be a violation of the HRO. On appeal, the Court of Appeals held that the district court's finding that it was sufficiently credible to believe that Bolton sent the package was not erroneous. The Court also found that, in combination with the package delivery, even a single use of the "@mention" on Twitter to Polinsky constituted repeated incidents per the statute. In regards to Bolton's First Amendment objection to the prospective acts prohibited by the HRO, the district court carefully and narrowly tailored its order appropriately so as not to unconstitutionally chill Bolton's First Amendment rights. Bolton also objected to the 20-year issuance of the HRO, but the Court of Appeals agreed with the district court that his previous violations were sufficient to issue an HRO for such a period of time. Affirmed.

Price v. Miller, No. C0-99-836 (Minn. Ct. App. Aug. 24, 1999) (UNPUBLISHED).
Ramsey County, Judge Charles A. Flinn, Jr.

Price obtained an HRO against Miller. Miller appealed, arguing there was insufficient evidence to issue the order. The court held there was sufficient evidence to issue the order because Price and his roommate testified to Miller's harassing behavior and supported that testimony with evidence. The referee was in the best position to evaluate the credibility of the witnesses, and given the record, the issuance of the order was not clearly erroneous.

R

Rabideau v. Rabideau, No. A11-2321 (Minn. Ct. App. October 1, 2012) (UNPUBLISHED).
Washington County, no judge reported

Repeated, unwanted acts support the issuance of an HRO. Daughter had a contentious relationship with her parents over the custody of her child. Daughter and father had a disagreement which resulted in her being charged with and pleading guilty to second-degree assault. As a result, a domestic-abuse-no-contact-order (DANCO) was issued against her. Mother sent messages almost daily to daughter's email address, directing them to the child. Parents repeatedly sought orders for protection against their daughter in Scott and Washington counties and filed another custody petition in Scott County. Daughter filed a petition and affidavit for an HRO against her parents. The trial court found that both parents' acts made daughter fearful and intimidated which had a substantial adverse effect on the safety, security and privacy of both her and her child. The court also found that their behavior rose to the level of harassment. The appellate court affirmed the trial court's issuance of the HRO.

Rader v. Miho, No. C3-98-1937 (Minn. Ct. App. July 6, 1999) (UNPUBLISHED).
Ramsey County, Referee Donna Trethewey

Husband and wife were divorced in November 1997. Wife filed for an HRO against the husband in August 1998. At the HRO hearing, wife testified to four incidents of harassment. One such incident occurred in mid-June 1998. Both wife and sister testified that when wife's son was walking home, a man rode his motorcycle up and down the street where the son was walking. The man stopped at an intersection and waited for the son. When the son passed him, the man addressed the son by name, and the son recognized him as husband. Son was scared, ran home, and related the incident to wife and sister. Husband denied all four incidents. The HRO was granted. Husband appealed, claiming that the court's findings were not supported by the evidence in the record and that the court erred in allowing wife and sister to testify about the motorcycle incident involving son and husband. The appellate court ruled that a district court may issue an HRO if it finds reasonable grounds to believe that the harasser has engaged in harassment. The record supported the court's harassment determination. The appellate court also ruled that hearsay evidence may be admitted in HRO cases if the words were spoken about a startling event or condition (excited utterance exception).

Residences at the Jewel v. Tiedeman, No. C5-03-45 (Minn. Ct. App. Aug. 5, 2003).
Wabasha County, Judge Jodi L. Williamson

The Jewel obtained an HRO against Tiedeman. The district court completed a standard HRO form, checking boxes to indicate why the HRO had been granted. Additionally, the district court made an entry describing an assault, offensive and indecent conduct, and trespass. Tiedeman challenged the HRO, arguing that: (1) the district court's use of a form order rendered its ruling defective for lack of specific findings; (2) the restraining order was not based on "repeated" incidents as required by Minn. Stat. § 609.748; and (3) the restraining order's requirement that appellant "stay away" from respondents and their employees was vague and overbroad.

First, the court held that the checked boxes on the standard HRO form are sufficient to establish specific findings for the purposes of appellate review. The court also noted that in this case the district court made an entry of specific offenses and that the transcript contains evidence to support the Jewel's claims regarding the two specific incidents of harassment. Second, the court held that there was sufficient evidence to satisfy the statutory repeated incidents requirement by pointing out that the district court relied on evidence of two incidents of harassment, one of which was an assault. The court concluded the HRO was appropriate because, under the statute, harassment is also defined as one incident of physical or sexual assault. Third, the court held that the HRO language "stay away" was not overly broad or vague in this context because Tiedeman continued to travel the road between his property and the Jewel without being found in contempt so far; the court reasoned that "common sense dictates that the 'stay away' language does not apply to one who is in his own house, or to one who is simply using a public road to get to and from his own house."

River Towers Ass'n v. McCarthy, 482 N.W.2d 800 (Minn. Ct. App. 1992).
Hennepin County, Judge Amundson

A trial court found McCarthy in civil contempt and fined him $250 for violating an HRO against him obtained by River Towers. McCarthy claimed the contempt finding was erroneous and the HRO violated his First Amendment Rights. The court held McCarthy could not be fined for violating a court order under civil contempt because civil contempt cannot be used to punish an individual for past misconduct. Further, McCarthy could not be held criminally in contempt

because he did not have the option of a jury trial, required under criminal contempt proceedings. In addition, the court held the HRO did not unduly burden McCarthy's First Amendment rights because it was content neutral; the HRO only restricted the *manner* in which McCarthy communicated with River Towers, not the *content* of his speech with River Towers.

***Robbennolt v. Weigum*, No. A15-1440 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED)**
Ramsey County, no judge reported

Robbennolt was granted an *ex parte* HRO against her mother Weigum, on behalf of herself and her minor child. Weigum requested a hearing, but asked that she be allowed to appear by telephone. The court allowed an initial telephone hearing, but instructed Weigum to appear in person for any subsequent hearings. Weigum did not appear via telephone or in person and a 2 year HRO was granted. Weigum subsequently moved to have the HRO dismissed, indicating her telephone had malfunctioned. The court granted Weigum's request for hearing, but required she appear in person for an evidentiary hearing. Weigum indicated she would not appear in person, and her motion was subsequently denied.

Weigum appealed, arguing that the district court's findings of fact that incorporated Robbennolt's allegations were erroneous. The Court of Appeals noted that since Weigum refused to appear for an evidentiary hearing and did not cite any evidentiary record to establish errors in the findings, it would defer to the district court's ruling. Weigum filed correspondence and other documents with the Court of Appeals, which they declined to consider because the materials were not filed with or considered by the district court when it issued the HRO. Weigum next contended that the district court's findings do not support the issuance of an HRO. The Court held that Weigum's repeated calls to authorities constitute "repeated incidents of intrusive or unwanted acts" that have had a substantial adverse effect on the "privacy" of Robbennolt and her minor child. Lastly, Weigum argued that since she is the minor child's grandmother an HRO is not warranted. The Court relied on the statute's definition, which explicitly states that an HRO can be issued "regardless of the relationship between the actor and the intended target." The Court of Appeals affirmed.

Roer v. Dunham, 682 N.W.2d 179 (Minn. Ct. App. 2004).
Hennepin County, Judge Peterson

The court may not extend an HRO beyond the statutory two-year period. However, the court may issue a new HRO if all the requirements for an initial HRO are met: (1) the petitioner has filed a petition; (2) the sheriff has served the respondent with a copy of the TRO with notice of time and place of hearing (or service by publication); and (3) the court finds at the hearing that there are reasonable grounds to believe that respondent has engaged in harassment. In addition, the petition must identify the parties and be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought. In this case, the proceeding before the district court met the requirements for an initial HRO, therefore the court effectively issued a new HRO. However, the HRO was reversed because the court made a finding of only a single incident of harassment.

Rokusek v. Brown, No. A13-1092 (Minn. Ct. App. Dec. 20, 2013) (UNPUBLISHED).
Olmstead County, no judge reported

Barry Rokusek filed an affidavit and petition for a HRO on behalf of his daughter, Julianna Rokusek, against her ex-boyfriend, appellant Alexander Brown. After Julianna and Brown testified at a hearing, the district court stated that it did not want to hear any more testimony. The district court granted the petition for the HRO. Brown appealed. The Court of Appeals stated a hearing "includes the right to present and cross-examine witnesses, to produce documents and to have the case decided pursuant to the findings required" under the statute. *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. Ct. App. 1995). The Court of Appeals held that the district court did not provide Brown with an opportunity to make an offer of proof about his testimony or to call rebuttal witnesses and this was a denial of Brown's right to a full and fair hearing. The court of appeals reversed and remanded the case for a new hearing.

Royal Oaks Holding Company v. Ready, No. C4-02-267 (Minn. Ct. App. Oct. 7, 2002) (UNPUBLISHED).
Dakota County, Judge Willis

Appellants are three individuals (who call themselves the "Pinkville 3") who engaged in what they called "protest activities" against a development company (Royal Oaks) that was planning to develop a subdivision adjacent to land owned by appellants. Royal Oaks secured a temporary injunction against the Pinkville 3, ordering that they not display offensive or defamatory signs about Royal Oaks, not distribute or publish offensive or defamatory material about Royal Oaks, and not trespass on the property owned by Royal Oaks or come within 200 feet of the entrances to the property. The Pinkville 3 appealed the injunction on several different grounds.

Posted Signs: Appellants' first argument is that they are entitled to post signs on their private property as "protest activities" that are protected by the First Amendment. Because the district court made no legal determination that the signs that were posted on appellants' property were obscene or defamatory and thus outside the scope of the First Amendment protection, the appellate court vacated that portion of the order.

No-Contact Order: Appellants next argued that the no-contact provision of the injunction violated their First Amendment rights to free speech. The appellate court found that freedom of speech is not without limits: a time, place, and manner restriction is not unconstitutional if it is content-neutral, narrowly tailored, and leaves open alternative means of communicating information. The appellate court held that the no-contact provision did not violate any First Amendment rights. However, the findings were insufficient to make a finding of harassment, thus the no-contact provision was vacated, and the issue remanded to district court to make a finding of harassment.

Prior Restraint: Appellants argued that the order prohibiting them from displaying signs or distributing materials constituted an unlawful prior restraint on free speech, because it prohibited speech that had not yet been legally determined to fall outside the protection of the First Amendment. Royal Oaks did not show a compelling state interest requiring this prior restraining, thus the appellate court vacated this provision of the order.

Trespass: The appellate court found that the district court did not abuse its discretion by ordering the Pinkville 3 not to trespass on Royal Oaks' land. Thus, the no trespass order was affirmed but remanded with the other issues for further review by the district court.

S

Safstrom v. Morin, No. A15-1879 (Minn. Ct. App. September 19, 2016) (UNPUBLISHED).
Beltrami County

Appellant Safstrom and Respondent Morin are neighbors who have adjoining properties. There was a running dispute in 2015 about smoke from Morin's bonfires drifting onto Safstrom's property, which resulted in competing HRO petitions. Safstrom claimed the purpose of the fires was to burn garbage, or to intentionally try to get the children injured in the fires so Morin could collect welfare. Morin claimed the fires were for the kids to toast marshmallows. There were several instances where Safstrom came onto Morin's property to yell about the smoke. Safstrom began filming Morin's property when the fires were burning to prove excessive smoke, but the district court noted that the videos contained images of Morin's children. The district court granted Morin's petition for HRO because of repeated incidents and denied Safstrom's petition because she could not prove more than one incident of harassment. The harassment that the district court found was that Safstrom trespassed onto Morin's property multiple times, she frightened Morin and her children by yelling multiple times, and repeatedly filmed Morin's children and property without permission. On appeal, Safstrom argued that yelling incidents do not constitute harassment; the Court of Appeals disagreed, because in the context of the feud, the yelling was found to have frightened Morin's children. However, the Court took issue with the district court's finding of filming as harassment, as Safstrom was doing so to prove Morin was creating a nuisance. Affirmed the HRO, but clarified that the harassment should be limited to the yelling incidents only, not the filming.

Sauer v. Scheibe, No. A10-428 (Minn. Ct. App. Oct. 12, 2010) (UNPUBLISHED).
Chisago County, no judge reported

After terminating his parental rights, and agreeing to only contact his daughter through receipt of an annual letter from her maternal grandparents, appellant Richard Scheibe violated the agreement by sending his daughter gifts and cards. As a result, respondent-grandparents obtained an HRO on behalf of the child against appellant. Appellant argued he was denied due process because he was not afforded counsel at the HRO hearing he failed to attend. The HRO statute does not provide the right of counsel and appellant was given the opportunity by the court to conduct his own legal research prior to the hearing.

Schact v. Lucas, Nos. A09-0008, A09-0009 (Minn. Ct. App. Aug. 18, 2009) (UNPUBLISHED).
Hennepin County, no judge reported

The district court did not err in failing to find harassment sufficient to justify the issuance of harassment restraining orders. The allegations against petitioner's female co-worker, Reynolds, were she made angry facial expressions and assumed threatening poses and, on one occasion, turned down the sides of her shorts in his view. The allegations against the male co-worker, Lucas, were he gave petitioner angry looks, briefly held the female co-worker's shorts up to petitioner's face, and twice whispered threats to break petitioner's nose, although petitioner was not entirely certain about what he whispered. Applying an objective standard, the court found the district court did not error in failing to determine Reynolds's conduct would presumptively have a substantial adverse effect on the safety, security, or privacy of a typical victim in his situation, as the incident occurred in public and there was no suggestion the appellant fled the scene due to the conduct or complained immediately to a supervisor or police. In regards to respondent Lucas' actions, the court determined

it was unclear what Lucas intended by this conduct. Further, appellant was only "reasonably certain" of what Lucas said, and there is no allegation Lucas's posture or conduct simultaneously or subsequently implied a confrontation with appellant.

***Scheffler vs. McDonough*,** No. A16-0949 (Minn. Ct. App. May 1, 2017) (UNPUBLISHED).
Anoka County

Appellant Scheffler petitioned for an HRO against Respondent McDonough, a now-retired police officer citing an incident of assault. At the evidentiary hearing, McDonough testified that he was investigating a possible altercation and reports of a prowler. McDonough said Scheffler approached his squad car and asked why McDonough was there, to which McDonough responded by requesting to see Scheffler's ID. Scheffler refused, at which point McDonough said Scheffler needed to "get the f*ck out of here, then." Scheffler refused, and asked for a supervisor, at which point McDonough attempted to handcuff Scheffler. During this incident, Scheffler had called 9-1-1, claiming a police officer had followed him and that he wanted to leave; Scheffler was still connected to 9-1-1 during this altercation, where the attempted handcuffing can be heard, and McDonough is heard saying "Know your name yet?" McDonough claimed Scheffler was intoxicated, ticketed him for obstructing the legal process for resisting the handcuffing. This charge was dismissed and expunged. Scheffler claimed McDonough attacked him, and he suffered a concussion as a result. The district court denied the HRO petition, concluding that Scheffler failed to show McDonough was acting outside of his capacity as a police officer, and that McDonough's actions did not constitute harassment under the statute. Scheffler appeals, arguing that the HRO statute has no exception for police officers. The district court found that Scheffler's injuries may have resulted from his own act of resisting arrest, and the Court of Appeals agreed. A court may issue an HRO based on an assault, but it does not have to just because there are reasonable grounds to believe a person physically assaulted another. Affirmed.

Schewe v. Doyle, No. C4-02-799 (Minn. Ct. App. May 6, 2003) (UNPUBLISHED).
Dodge County, Judge Minge

Schewe filed for and was granted an HRO against Doyle on February 12, 2002. In May 2002 there was a hearing to determine if Doyle was in contempt of court for violating the HRO. Upon hearing testimony from Schewe's sister, Hanson, stating that Doyle had called Hanson on the phone, the district court found Doyle in contempt and sentenced him to ninety days stayed so long as he refrained from contacting Schewe's family for the duration of the HRO. The appellate court reversed this finding of contempt, finding that Doyle's phone call to Hanson was not third party contact as prohibited by the HRO. Doyle never asked Hanson to relay any messages to Schewe. At the contempt hearing, the district court also modified the HRO, prohibiting Doyle from contacting Schewe's family and from entering Dodge County without notifying the sheriff. The appellate court upheld the prohibition against Doyle contacting Schewe's family members, but reversed the requirement that Doyle contact the Dodge County sheriff as overbroad.

Sharper Management, LLC vs. Pittel, No. A16-0251 (Minn. Ct. App. August 20, 2016) (UNPUBLISHED).
Hennepin County

Appellant Sharper Management manages the daily operations of the condominium community where Respondent Melvin Pittel resides. Between the two, there is a history of disagreement about how the Westbrooke Condominium Board ("the board") manages Meadow Creek, the condominium community. In 2013, Appellant obtained a two-year HRO against respondent, which ordered him to deactivate websites where he posted criticism of the board as well as board members' personal information, and prohibited him from creating or maintaining any website to harass the appellants or their agents. In 2015, Appellants sought to extend the HRO, alleging multiple violations of the 2013 HRO. At an evidentiary hearing regarding the web content in question, the district court agreed that the content was unpleasant and offensive, but did not amount to harassment as defined by the statute. The court dismissed the case and terminated the temporary restraining order, the decision to which the Appellants appeal. The owner of Appellant Management, LLC testified that he did not believe his employees would be safe in the community, but did not specify how. A former president of the board testified his wife felt unsafe, but his wife was never mentioned on any of the websites. The Court of Appeals agrees that the Respondent engaged in name calling, accusations, and other general unpleasant writings, and agrees with the district court that the Appellants had failed to prove that Respondent's actions were more than upsetting or offensive, and they did not rise to the level of harassment. Therefore, the district court did not err when it declined to extend Appellant's HRO. Affirmed.

State v. Schocker, No. C7-96-432 (Minn. Ct. App. Oct. 1, 1996) (UNPUBLISHED).
Beltrami County, Judge Terrance C. Holter

Schocker was convicted of an HRO violation and appealed, arguing the evidence was insufficient to support his conviction since the HRO was not entered into evidence. The court held there was sufficient evidence from the record because Schocker read part of the HRO into the record, admitted he knew of its existence, and the same judge who issued the order presided over the bench trial on the HRO violation.

Schultz v. Ryan, No. A04-590 (Minn. Ct. App. Jan. 18, 2005) (UNPUBLISHED).
Hennepin County, Judge Thorwald H. Anderson

Appellant Ryan challenged the district court's decision to grant respondent Schultz's petition for an HRO, arguing that the record does not support the finding that Ryan harassed Schultz when (a) the district court based the order on one incident, which alone does not constitute harassment; and (b) the subsequent contact between the parties at work was innocuous and benign.

Review of the record established that the district court did not issue the order solely based on one incident. The district court identified several incidents of unwanted or intrusive acts. The parties knew each other from working in the same office building. The record indicated that after a "happy hour" get together, Schultz thought Ryan was being too pushy and told him to back off. After that situation, Ryan had called her names and repeatedly came to her office area. The human resources department required Ryan to stay out of her office area, and eventually he was also barred from entering Schultz's floor. The Court of Appeals acknowledged that many of Ryan's actions, if viewed in isolation, may seem innocuous and benign. But when considered in the aggregate and in the context of the parties' relationship, they demonstrate harassment. Therefore, the Court of Appeals affirmed the district court's decision.

Schwartz v. Meyer, No. C5-00-1231 (Minn. Ct. App. Mar. 20, 2001) (UNPUBLISHED).

Dakota County, no judge reported

This action involved Schwartz, a pastor, and the Meyers, parishioners. The Meyers confronted Schwartz in a non-public area of the church and refused to leave until police arrived, disrupted a church service, and made derogatory comments about Schwartz in education classes. Schwartz secured a no trespass order against the Meyers. They then parked and picketed near the church every day for three months. Schwartz then filed for and received an HRO against the Meyers. The Meyers appealed, arguing that their actions were not harassment or targeted residential picketing and that the HRO violated their First Amendment rights. The court said the incidents were sufficient to support a harassment finding and since the picketing was at Schwartz's private residence as well as at the church, it was targeted residential picketing. There was no violation of First Amendment rights, as the HRO was justified, narrowly tailored and allowed the Meyers other means for communicating. The HRO was affirmed.

Secklin v. Skelton, No. A04-1743 (Minn. Ct. App. Aug. 9, 2005) (UNPUBLISHED).
Stearns County, Judge Willard P. Lorette

Appellant challenged the issuance of an HRO, arguing he was not provided a full hearing. Because the district court failed to swear in witnesses testifying at trial, the case was vacated and remanded.

Shannon v. Anderson, No. C8-95-1305 (Minn. Ct. App. Feb. 27, 1996) (UNPUBLISHED).
Dakota County, Judge Leslie May Metzen

Shannon petitioned for an HRO against Anderson, a student, due to his disruptive and inappropriate behavior. During the evidentiary hearing, testimony regarding Anderson's conduct and a comment made by Anderson to a police officer referring to Shannon as a "f***ing b*tch" were entered into the record. The district court issued a two-year HRO that prohibited Anderson from contacting Shannon and from being on the campus of Inver Hills Community College. Anderson argued there was insufficient evidence to establish his conduct was "intended to adversely affect the safety, security, or privacy of another" within the meaning of the statute. Based upon the district court's findings regarding Anderson's disruptive and threatening behavior, the court of appeals held the record contained sufficient evidence to support the inference that his conduct was intended to have an adverse effect on Shannon. Anderson also argued the abusive comment he made about Shannon was inadmissible as hearsay and should not have been admitted. The court stated that a statement is not hearsay if it is offered against a party and is the party's own statement. The court held the comment was properly admitted because it was offered against him and was a statement he made.

Shannon v. Ramoo, No. C8-97-1292 (Minn. Ct. App. Feb. 10, 1998) (UNPUBLISHED).
Ramsey County, Judge James H. Clark

A court may issue an HRO when there are reasonable grounds to believe a person has engaged in harassment. Harassment is repeated, intrusive, or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another. The district court could reasonably conclude Ramoo intended to harass Shannon and its findings are supported by the evidence of Ramoo's touching, shouting, reaching into Shannon's pockets, and other intrusive behavior while at the workplace.

Sobolev v. Warner, No.C3-01-1822 (Minn. Ct. App. Apr. 16, 2002) (UNPUBLISHED).
Ramsey County, Judge Kathleen R. Gearin

Sobolev filed for an HRO against Warner. At the hearing, the court dismissed the order. Warner claimed that he was attempting to keep Sobolev from driving while intoxicated and that there was no intent to harm Sobolev. The appellate court found sufficient evidence in the record to support dismissal of the order.

Starnes v. LoPesio, No. C4-94-1548 (Minn. Ct. App. Jan. 17, 1995) (UNPUBLISHED).
Hennepin County, Judge William S. Posten

Due to hostile treatment, the Starneses sought and were granted HRO against LoPesio, their landlord. LoPesio argued the district court erred in issuing the HRO because there was insufficient evidence to support the conclusion that he harassed his tenants. The court held that there was sufficient evidence to support the district court's findings that LoPesio harassed his tenants based upon the testimony of the tenants and LoPesio's attitude towards his tenants. The court further held that the law did not require a threat of harm or obscene language before harassment could be found, thereby rejecting LoPesio's argument that such conduct was required under the statute.

Steps of Success Homes, L.L.C. v. Dowell**,** No. A09-587 (Minn. Ct. App. Dec. 29, 2009) (UNPUBLISHED).
Itasca County, no judge reported

Appellate court concluded that Minn. Stat. § 609.748, subd. 2 (2008) did not confer standing on the respondent to seek and obtain an HRO on behalf of either resident. Respondent, Steps of Success Homes, a foster home for teen-aged girls, sought and obtained an HRO that prohibited appellant Dowell, a former employee of the home**,** from contacting the facility, its employees, and its residents for two years. Dowell appealed.

On appeal, Dowell argued the district court erred by concluding respondent had standing to seek an HRO on behalf of the residents of its foster home because respondent is not among the persons listed in the statute that qualify for standing. Under Minn. Stat. § 609.748, subd. 2 (2008), only a victim of harassment or their legal guardian has the authority to file a petition for an HRO. Thus, the appellate court indicated the statute did not confer standing on respondent Steps to seek and obtain an HRO on behalf of either of the teen-aged girls residing at the foster home. In regards to injury-in-fact standing, the court indicated that Steps likely has a legally recognized interest in obtaining an HRO prohibiting Dowell from harassing Step's residents while those residents are in its care or control. However, if Dowell harasses residents without implicating Steps duty toward the residents, only the residents or their legal guardians have standing to seek an HRO. Thus, the crux of the issue is whether or not the harassment occurred while the teenagers were in Step's control. The district court erred by concluding that Steps had standing to petition for an HRO on behalf of either of the two teen-aged girls, as the 16-year-old girl was under Step's control, but there was only one incident of harassment, and the 18-year-old girl was not under Step's control when the harassment occurred, and therefore the harassment in question cannot be used as a reason to seek an HRO on behalf of Step's residents.

Stokes-Ciochetto & Ciochetto vs. Eskeli**,** No. A16-1211 (Minn. Ct. App. Jan. 17, 2017). (UNPUBLISHED).

St. Louis County

Appellant Eskeli was involved in a relationship with Respondents' minor daughter, A.S. Respondents disapproved of the relationship, and repeatedly informed Eskeli that he was not allowed in the family home. When the relationship ended, Eskeli requested to see A.S. via text message, and A.S. agreed to talk. That night, Eskeli entered the home through a basement window, went to A.S.'s bedroom, and A.S. hid him in the closet to avoid her parents finding him. Respondent Paul discovered Eskeli, called the police, and he was cited for trespass. After this, Eskeli continued to text A.S., threatening to kill himself; A.S. responded to the texts in the hope she could convince him not to commit suicide, her only reason for doing so, she testified in court. The district court granted the HRO based on the single instance of trespass. On appeal, Eskeli argued that the single instance of trespass was not sufficient to issue an HRO, and the family conceded that was possible, but that they also argued basis for the HRO based on the repeated incidents of contact with A.S. The district court order showed neither acceptance nor rejection of the repeated incidents argument from the family. Therefore, the Court of Appeals could not affirm the HRO because it would require factual findings that the Court would not engage in. Remanded to the district court for factual findings.

T

Tarlan v. Sorensen, No. C2-98-1900 (Minn. Ct. App. Apr. 27, 1999) (UNPUBLISHED).
Beltrami County, Judge Paul S. Rasmussen

On June 18, 1998, husband and wife filed for divorce. They continued to live together with their three minor children. On July 23, 1998, wife requested an HRO. She alleged that husband harassed her by hiring a babysitter to watch the kids while she was home; she later testified that she and her husband often hired nannies or babysitters to watch the children while they were home. She also alleged that husband released her medical records without her permission and he interfered with her ability to receive mail. In addition, she stated that while she filed for an HRO, she had no intention of getting a divorce. The court found her credibility questionable and denied the HRO. Wife appealed, claiming that she adequately proved that her husband harassed her. The appellate court ruled that the husband's conduct did not rise to the level to require the issuance of an HRO.

Thompson v. Olson, No. A04-1477 (Minn. Ct. App. June 21, 2005) (UNPUBLISHED).
Morrison County, Judge Thomas A. Godzala

To issue an HRO, it is sufficient for the district court to find defendant's actions had a substantial adverse effect on the safety, security, or privacy of the petitioner. In this case, the petitioner/respondent alleged appellant harassed him over the telephone at home and at work. Appellant argued the evidence was insufficient to support issuance of an HRO, alleged respondent lied under oath, and alleged the district court considered testimony on issues not contained in respondent's original petition. However, these allegations were not supported by legal authority and thus dismissed. The court determined that there was reasonable evidence to support the district court's findings.

Tibbetts v. Erichsen, No. A04-829 (Minn. Ct. App. Feb. 8, 2005) (UNPUBLISHED).
Wright County, Judge Kim R. Johnson

The district court granted a two year HRO to the respondent, Tibbetts, based on the specific findings that the appellant, Erichsen, (1) made uninvited visits to Tibbetts; (2) made harassing phone calls to Tibbetts; and (3) entered Tibbetts' residence without permission. Erichsen appealed, contending that she lacked the intent necessary to harass Tibbetts.

Under Minn. Stat. § 609.748, subd. 1(a)(1), Erichsen's acts constitute harassment if they substantially affected Tibbetts' privacy, even if Erichsen did not intend to harass Tibbetts. The appellate court upheld the HRO, holding that the district court had found there were reasonable grounds to believe that Erichsen engaged in repeated incidents of intrusive or unwanted acts, words, or gestures that had a substantial adverse effect on the safety, security, or privacy of Tibbetts.

Traiforos v. Mahoney, No. C3-92-340 (Minn. Ct. App. July 14, 1992) (UNPUBLISHED).
St. Louis County, Judge Robert V. Campbell

Traiforos petitioned for and was granted an ex parte OFP, which was served on Mahoney. At the ex parte hearing, the court found domestic abuse had not occurred. Although the order converted the action to one for harassment and prohibited future contact between the parties, the only statute mentioned in the order was the Domestic Abuse Act. Domestic abuse proceedings are not exclusive of other proceedings, and the trial court explicitly converted the action to one for harassment. Because the harassment statute would produce an order similar to the one the trial court issued, the court need only show the prerequisites needed for the harassment statute. The trial court's finding was affirmed because it was functionally the same order the trial court would have issued had it applied the harassment statute.

Treptow v. Johnson, No. A05-272 (Minn. Ct. App. Oct. 4, 2005) (UNPUBLISHED).
Ramsey County, Judge John B. VanDeNorth

Appellant argued an HRO was based on incomplete evidence. Appellant's brief, however, contained only assertions unsupported by law. An assignment of error based on mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. The court upheld the issuance of the HRO.

***Treptow v. Vacko*, No. A15-1084 (Minn. Ct. App. April 18, 2016) (UNPUBLISHED)**
Anoka County, no judge reported
In early 2014, Treptow and Vacko each filed for an HRO against the other. At the evidentiary hearing, Vacko submitted a telephone log into evidence, testifying that one of the phone numbers was associated with Treptow. An HRO was issued against Treptow after an evidentiary hearing. At the time the HRO was issued, Treptow was on probation and required not to engage in any harassing behaviors. Subsequently, Treptow was arrested for violating that condition, spending two days in jail. Because of the probation violation, the allegations supporting the HRO were investigated. This investigation found that Vacko provided false information in her petition, forged the telephone log, and made false statements under oath. Vacko was charged with perjury and forgery.

In 2015, Treptow filed for an HRO against Vacko, on behalf of herself, her three children, and her sister. Treptow alleged Vacko had filed for the prior HRO with the intent of getting Treptow arrested. The district court granted an HRO on behalf of Treptow, but not her children or sister.

Vacko appealed, arguing that the evidence was insufficient because there were no repeated incidents of harassment, and because her conduct did not adversely affect Treptow. The Court of Appeals found that sufficient evidence to support the HRO: Vacko provided false information, submitted a forged document, and falsely testified under oath. The Court also held that Treptow was adversely affected when she was arrested and spent time in jail because of Vacko's allegations. Vacko next argued that, "neither [Treptow] nor the district court cited any specific evidence proving that [Vacko] intended to harass [Treptow]" and that "[t]he evidence also does not support a conclusion…that [Vacko] had 'an objectively reasonable belief'" that there would be a substantial adverse effect on Treptow. The Court found that Treptow only had to prove one, not both, and that since Treptow had proved objectively unreasonable conduct, she did not have to prove Vacko's intent as well. Vacko next argued that the doctrines of collateral estoppels and res judicata precluded the district court from granting the 2015 HRO. The Court ruled that since it was not known at the time that Vacko was committing perjury and forgery, the issue was not "identical to one in a prior adjudication" and the earlier claim did not involve "the same set of factual circumstances." Vacko moved to strike portions of Treptow's appellate addendum as pertaining to matters outside the record on appeal. The Court of Appeals did not need to consider or rely on the challenged materials in reaching its decision, and denied the motion as moot. The Court of Appeals affirmed.

V

Vacko v. Treptow, No. A15-1745 (Minn. Ct. App. July 5, 2016) (UNPUBLISHED).
Ramsey County

Appellant Vacko and Respondent Treptow are connected through a series of romantic entanglement disputes. In 2014, Vacko petitioned for an HRO against Treptow, claiming that Treptow harassed Vacko because Treptow's twin sister was romantically interested in the man who is now Vacko's husband. The district court granted the HRO based on Vacko's testimony of harassing and threatening behavior committed against her by Treptow. Later that year, Treptow moved to vacated the HRO, claiming Vacko had committed fraud upon the court and perjured herself on the stand. The court denied this motion. At the time the HRO was issued, Treptow was on probation, and the state filed a probation-violation allegation against Treptow because the HRO violated the condition of her probation keeping her from engaging in harassing behavior. At the conclusion of this investigation by the Ramsey County Sheriff's Department, the probation violation allegation was dismissed. Treptow renewed her motion to vacate, again alleging forgery, fraud, and perjury by Vacko. The court again denied it. Treptow moved for relief from the HRO, after the state charged Vacko with perjury and forgery of phone logs at her initial HRO hearing. The district court vacated the HRO as a result. Vacko appealed, arguing collateral estoppel and res judicata, based on the court's prior decisions to not vacate the HRO. The Court of Appeals reasons that the prior denials to vacate were decided before Vacko was charged with perjury and forgery, meaning the circumstances around Treptow's allegations had changed; a new criminal complaint meant that the allegations of fraud contained a new set of factual circumstances. Therefore, collateral estoppel and res judicata do not apply. Affirmed.

VanCamp v. Vancamp, No. A14-1926 (Minn. Ct. App. June 1, 2015) (UNPUBLISHED).
Pennington County, no judge reported

Tyler VanCamp and Tracey VanCamp divorced in 2006. In 2011, a post-dissolution order restricted contact between Tyler VanCamp and Tracey VanCamp to matters concerning their minor children. Deidre VanCamp is currently married to Tyler VanCamp. Deidre has two minor children from a prior marriage, who live with Deidre and Tyler.

The district court issued a HRO on behalf of Deidre and her children as against Tracey VanCamp. The court found that Tracey VanCamp had followed Deidre VanCamp and her two children at a county fair yelling, "Mommy loves you." Deidre VanCamp testified that the group "tried to maneuver away," but Tracey VanCamp "chased" them down the fairway. Deidre VanCamp testified that Tracey VanCamp excessively called her home when Tyler VanCamp had parenting time with the joint children. The district court also found that Tracey VanCamp had taken pictures of one of Deidre's minor children at school without permission. The Appellate Court found that a reasonable person would have known the conduct was intrusive and unwanted, given the high level of conflict between the families. Further, it was noted that a reasonable person in Deidre VanCamp and her children's position would feel their privacy had been invaded.

Ventura v. Davis, No. A03-1448 (Minn. Ct. App. June 22, 2004) (UNPUBLISHED).
Ramsey County, Judge Michael F. Fetsch

After many incidents in which Davis attempted to provoke Ventura by calling him names, making obscene gestures, taunting him, and threatening to damage his vehicle, Ventura was granted an HRO. Davis appealed, claiming that it was not possible for him to invade the privacy of a public figure. The appellate court disagreed, stating that the district court had specifically found that Davis' acts had a substantial adverse effect on the safety and security of Ventura. The HRO was affirmed.

W

Watson v. Johnson, No. A16-1040 (Minn. Ct. App. March 20, 2017) (UNPUBLISHED).
Carlton County

Appellant Johnson is a committed resident of the Minnesota Sex Offender Program (MSOP) facility, and Respondent Watson was an employee there. Watson petitioned for an HRO, alleging the following instances of harassment by Johnson: following her in the building, loitering outside of her office, threats to stalk her, threats to have her fired, threats to have her deported, and that, after she quit her job at MSOP, he sent mail to her home address. In response, Johnson submitted an affidavit denying Watson's claims, instead claiming the following: he was watching her because he believed she was engaging in impermissible workplace conduct, and denied all of the rest of her claims, including that she quit her job, instead he alleged that she was fired for the aforementioned conduct. The district court granted the HRO. On appeal, Johnson argued three things: that Watson engaged in criminal activity and therefore should not have received an HRO to protect said criminal activity; that the district court erred by not having access to Watson and therefore being unable to serve her his request for production of documents; and finally, that the district court erred by using a standard computer form for the order, instead of an individualized finding report. On the first argument, the Court's review of the record found no credibility to Johnson's claims of Watson engaging in criminal activity. On the second argument, the record indicates that Johnson did not attempt to serve Watson or her attorney, but rather filed his production request with the district court administrator. Finally, the Court found that, while more specific findings would have been

useful on appeal, a lack of findings does not require reversal when the record supports the decision. Affirmed.

Weidner v. Hurt, No. A07-2001 (Minn. Ct. App. Sept. 30, 2008) (UNPUBLISHED).
Renville County, no judge reported

The district court did not abuse its discretion when it dismissed an HRO proceeding. A mother petitioned for an HRO on behalf of her daughter against the son of her ex-husband's wife. The wife functionally served as the son's guardian ad litem, even though the court did not formally appoint her, and requested a hearing because the court's ex parte order in the matter negatively impacted wife's parenting time with her son. The wife defended the allegations in the HRO petition on behalf of her son, who was otherwise unrepresented. The district court therefore did not err in holding the hearing requested by wife. The mother also argues that the district court should have found her evidence of son's alleged harassment to be credible and persuasive. However, appellate courts defer to district court credibility determinations.

Welsh v. Johnson, 508 N.W.2d 212 (Minn. Ct. App. 1993).
St. Louis County, Judge Gerald Martin

Welsh obtained a temporary HRO against Johnson after he and others picketed against abortion outside the clinic at which she worked and outside her home. Just after receiving the HRO, Johnson approached and followed Welsh. Subsequently, the district court issued a permanent HRO and Johnson challenged the constitutionality of the harassment restraining order statute as applied to the facts of his case, arguing the HRO violated his First Amendment rights. The court held the HRO was a constitutional time, place, and manner restriction on Johnson's First Amendment rights because it was content neutral by restricting *all* speech with Welsh, narrowly tailored to preserve Welsh's individual privacy, and allowed Johnson other means by which to express his views against abortion.

Westbrooke Condominium Association d/b/a Meadow Creek Condominiums, et al. v. Pittel, No. A14-0198 (Minn. Ct. App. January 12, 2015) (UNPUBLISHED).
Hennepin County, no judge reported

Harassing speech is not protected by the First Amendment. The prohibition outlined in the HRO was only to prevent appellant from creating or maintaining websites used to harass the respondents. The HRO requirement does not violate the First Amendment because it is narrowly tailored to prohibit unprotected speech. Appellant argued this restriction was unconstitutionally vague. Appellant relied on a Supreme Court discussion of a previous Minnesota statute that allowed a court to enjoin a publication source if it published material that included "malicious, scandalous and defamatory speech." That statute was found to be unconstitutionally vague. The Appellate Court distinguished this case, stating that the district court's order specifically prohibited appellant from posting harassing as defined by Minn. Stat. § 609.748, subd. 1(a)(1).

Williams v. Rimmer, No. A14-1431 (Minn. Ct. App. May 26, 2015) (UNPUBLISHED).
Anoka County, no judge reported

The Domestic Abuse Act states that an order for protection may exclude an abusing party from "a reasonable area surrounding the [petitioner's] residence," but that the order must "specifically"

describe the area of exclusion. The Court of Appeals determined that a HRO should be subject to the same specificity requirement, especially when a violation of either order exposes the violator to criminal sanctions. Here, the district court did not abuse its discretion in issuing an HRO, where the evidence showed appellant engaged in harassment by making threatening statements and calling respondent abusive names. However, excluding appellant from being within a two-block radius of respondent's home does not satisfy the specificity requirement because respondent's home address is not identified in the order and the record does not indicate whether appellant knows where respondent resides.

Witchell v. Witchell, 606 N.W. 2d 730 (Minn. Ct. App. 2000).
Ramsey County, no judge reported

Husband and wife were separated since 1998 and in the process of obtaining a divorce. The parties agreed to a temporary visitation schedule for their two minor daughters. At the recommendation of a Ramsey County Family Court Officer, the parties exchanged a "visitation notebook" for the purpose of communicating in writing any concerns that they had regarding the parenting of their children. Husband made numerous harassing phone calls to wife. Wife filed for and received a one-year HRO, which contained a no-contact provision. Husband was charged with violating the HRO, but was found not guilty. Husband then asked the court to amend the HRO to allow the parties to communicate in writing through the visitation notebook. The court ruled that the parties may communicate in this manner, provided the communication related to the parties' children. In June 1999, wife asked the court to extend the HRO. She relied on four specific written statements made by her husband in the visitation notebook as evidence of harassment:
(1) "Joint legal and joint physical is what I want, and what you swore you would agree to for years and years if we got a divorce."
(2) "Please stop telling me what I need to do. Where I choose to go, and who I choose to see is my decision…we are separated."
(3) "Please do not use this book to threaten me."
(4) "This is the intent and purpose of child support which I pay on a monthly basis at the maximum rate. I will have my lawyer call your lawyer sometime to explain."

The court extended the HRO for two years. Husband appealed, claiming that he did not engage in conduct that constituted harassment because he did not intend to "adversely affect the safety, security, or privacy" of his wife. He contended that those comments addressed issues regarding the children. The appellate court ruled that the statements, when taken in context, were not intrusive and were also not intended to adversely affect the safety, security, or privacy of the wife. Therefore, the HRO was overturned.

Wyman v. Albrecht, No. C5-00-869 (Minn. Ct. App. Feb. 6, 2000) (UNPUBLISHED).
Ramsey County, no judge reported

Wyman, ex-husband of Susan Klasen, sought an HRO against Klasen's new husband, Albrecht. Albrecht is an attorney and had sent two letters for Klasen to the attorney who had represented Wyman during the divorce. Additionally, Albrecht had called Wyman's employer on some routine child support matters. Wyman claimed that these acts constituted harassment. The trial court found that Albrecht's actions were not harassment. On appeal, Wyman challenged the trial court's ruling because it did not make findings on each of his specific allegations. The appellate court held that there is no obligation for the trial court to make separate findings for each individual allegation of

harassment. The court held that the actions here did not constitute harassment, but rather were "ordinary and harmless."

Y

York v. Wood, No. C3-96-508 (Minn. Ct. App. Aug. 13, 1996) (UNPUBLISHED).
Hennepin County, Judge William S. Posten

York, who taught Wood's daughter from 1994-95, obtained an HRO against Wood following a series of disruptive incidents in York's classroom. Despite the HRO, which included no contact with York, Wood intentionally approached York's classroom to glare at her. Wood was charged with violating the HRO and she challenged the validity of the HRO, contending (1) that her due process rights were violated, and (2) that her conduct did not constitute harassment. First, the court held that Wood's due process rights were not violated. The court reasoned that Wood had received adequate notice based upon evidence that she received a letter from the principal of the school informing her of the HRO and its implications. Second, the court held that Wood's conduct constituted harassment. The court noted York's testimony regarding Wood's daily disruptions in her classroom. That testimony, together with another incident, was sufficient to support a finding of harassment under the HRO statute.

***Yule v. Kehlenbeck*,** No. A17-0211 (Minn. Ct. App. September 5, 2017) (UNPUBLISHED).
Anoka County, no judge reported

Respondent's testimony of additional HRO violation was relevant and admissible evidence of continued post-filing harassment, the petition did not need to be amended. Further, the lower court did not abuse its discretion in limiting Appellant's cross examination because the information sought was irrelevant to whether an HRO should be issued. Second, the Court held that Appellant sending several criticizing text messages to Appellant's cell phone—through different channels when Respondent blocked Appellant's phone number—was not objectively reasonable and sufficient to support Respondent's HRO request.

Z

Zwirn v. Jones, No. C8-00-1854 (Minn. Ct. App. Apr. 10, 2001) (UNPUBLISHED).
Anoka County, Judge Donald J. Venne

In a hearing on whether to grant an HRO, the court must allow the respondent the opportunity to present witnesses and evidence, even when the witnesses did not directly witness the incidents in question. Zwirn filed for an HRO against his co-worker, Jones. In granting the HRO, the district court did not allow testimony by a union president and a union steward on behalf of Jones because they were not direct witnesses to the contested events. The district court also did not allow the introduction of photos and a videotape that Jones claimed showed him being harassed by Zwirn. The appellate court found that the union president and steward should have been allowed to testify and that the photos and videotape should have been allowed into evidence. The court determined that under the liberal relevancy standard provided by the rules of evidence, the probative value of the evidence was not outweighed by the danger of unfair prejudice. Additionally, the appellate court faulted the district court for inadequate findings. The HRO was overturned.