

IN THE COURT OF APPEALS OF IOWA

No. 23-0367
Filed March 6, 2024

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DENIS MICHEL DEMERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Gary P. Strausser, District Associate Judge.

A defendant convicted of harassment challenges an order prohibiting him from having in-person contact with his minor sons for five years. **AFFIRMED.**

Janice Binder, Martelle, for appellant.

Brenna Bird, Attorney General, and Zachary Miller, Assistant Attorney General, for appellee.

Considered by Tabor, P.J., and Badding and Chicchelly, JJ.

TABOR, Presiding Judge.

At issue in this appeal is the district court’s entry of a no-contact order (NCO) against Denis Demers prohibiting in-person interactions with his minor sons—A.R.D. and B.D.—for five years. Demers now contends that the NCO—imposed after his conviction for third-degree harassment—deprives him of his constitutionally protected parental rights, is illegal, and must be vacated.

Because Demers did not preserve error on his challenge to the NCO involving A.R.D., we limit our review to the NCO involving B.D. His procedural due process challenge to the NCO was not preserved, and his substantive due process claim lacks merit. Because the district court correctly determined that B.D. was a “victim” of Demers’s public offense under Iowa Code section 664A.1(3) (2023), we affirm the ruling.

I. Facts and Procedural History

Demers is the father of two sons. At the time of the trial, A.R.D. was sixteen and B.D. was eleven years old. The boys have different mothers.

In early December 2021, A.R.D. told his mother that Demers had violated an order in place to protect his current wife, Desiree. As a result of A.R.D.’s report, Demers was arrested and spent one week in jail. Under a custody arrangement between Demers and A.R.D.’s mother, Demers picked up his son a few days later. According to A.R.D., Demers was upset about what had transpired and physically restrained him in the back seat of his car while he confiscated his phone. Demers told his son, “I am the cop now.” Over the course of the weekend, Demers subjected A.R.D. to prisoner-like treatment at what he called “Denis Demers County Jail.” Demers forced A.R.D. to wear attire resembling that of a prisoner,

kept him in an unfinished room dubbed a “cell” by Demers, and required A.R.D. to refer to himself as “inmate 1” during “headcounts.” Demers only permitted A.R.D. to leave his “cell” to use the bathroom.

Demers’s younger son, B.D., was present in the home while Demers kept A.R.D. confined in his “cell.” Demers told B.D. that A.R.D. had “screwed up,” and that he should not follow in A.R.D.’s footsteps or else he would endure the same treatment. B.D. became “worried” for his brother as he had not seen him come out of his “cell” for two days and because he could hear his father yelling at A.R.D. Eventually A.R.D. was let out and returned home to his mother where he revealed what had happened to him.

In response to the incident, the State charged Demers with two counts of witness tampering, one for each child, in violation of Iowa Code section 720.4 (2021), and first-degree harassment against A.R.D., in violation of Iowa Code section 708.7(1)(b) and (2)(a)(1). Before trial, the court issued NCOs under Iowa Code chapter 664A for both A.R.D. and B.D.¹ The case went to jury trial in October 2022. The court dismissed the witness tampering counts. The jury found Demers guilty of third-degree harassment, a simple misdemeanor, in violation of section 708.7(4). After the verdict, Demers wrote a letter to the judge asking that the NCOs with B.D. “be dropped.”

At sentencing, the court took judicial notice of A.R.D.’s victim impact statement. A.R.D. recalled that during the crime he was “the most terrified” he’d ever been in his life. He believed his father “deserves to go to jail.” A.R.D.

¹ The NCO protecting B.D. cited to Iowa Code section 664A.5, but the authority for issuing a temporary NCO is in section 664A.3.

expressed: “But my top priority is to keep the no contact order, I should never have to be in that situation again, and neither should [B.D.]. [B.D.] should have a no contact order too, because I think my dad will take his anger out on him if I’m not there.” The State recommended that the court impose five-year NCOs to protect both A.R.D. and B.D. On Demers’s behalf, defense counsel differentiated between the two sons:

[W]e have no objection to the NCO between [Demers] and [A.R.D.]. That is—it is not a good thing. It is always discouraging and sad to see a relationship like that, but obviously at this point in time that is not very productive for either party and we would have no objection to that. [A.R.D.] is also the named victim in the count that Mr. Demers was found guilty of.

But defense counsel pushed back on the NCO involving B.D. “It is asking far too much to require that Mr. Demers go without contact of his [eleven]-year-old son.” Counsel stressed that the State was asking for the NCO “in a simple misdemeanor where my client was found guilty of offending against a different person.”

At the end of the hearing, the court found that B.D. had suffered “emotional harm” and was a victim of Demers’ third-degree harassment offense. So the court issued a five-year NCO protecting both A.R.D. and B.D. The order—set to expire January 26, 2028—allowed Demers to communicate with his sons “through electronic means and in writing” as well as through third parties. Demers sought discretionary review of that NCO. Our supreme court granted his application and transferred the case to us.

II. Clarification of Statutory Authority for NCO

Demers’s NCO was issued on a form entitled Extension of No Contact Order, which cited Iowa Code section 664A.8. But as the State recognizes in its

brief, the controlling statute for the district court's action is Iowa Code section 664A.5 (Modification— entry of permanent no-contact order). “Iowa Code section 664A.5 is the statute permitting the entry of a sentencing no-contact order.” See *State v. Doe*, No. 23-0259, 2023 WL 8448474, at *3 (Iowa Ct. App. Dec. 6, 2023).

The statute provides:

If a defendant is convicted of . . . a public offense referred to in section 664A.2, subsection 1, . . . the court shall either terminate or modify the temporary no-contact order issued by the magistrate. The court may enter a no-contact order or continue the no-contact order already in effect for a period of five years from the date the judgment is entered . . . regardless of whether the defendant is placed on probation.

Iowa Code § 664A.5.

Because the court entered the NCO as part of the sentencing hearing following his conviction for third-degree harassment, it was a permanent order under section 664A.5, not an extension under section 664A.8. See *State v. Epping*, 878 N.W.2d 277, 279 n.1 (Iowa Ct. App. 2016) (explaining that when issuing order under section 664A.5, the court was not required to make a finding on the safety of the children, unlike section 664A.8).

III. Scope and Standards of Review

We review the entry of a permanent NCO under Iowa Code section 664A.5 for correction of errors at law. *Id.* at 278. “A court's factual findings with respect to a no-contact order should be sustained when supported by substantial evidence.” *State v. Petro*, 981 N.W.2d 686, 690 (Iowa 2022). When addressing the deprivation of a constitutional right, we review the claim de novo. *State v. Arietta*, 998 N.W.2d 617, 620 (Iowa 2023).

IV. Error Preservation

“[A] party has an obligation to raise an issue in the district court and obtain a decision on the issue so that an appellate court can review the merits of the decision actually rendered.” *State v. Crawford*, 972 N.W.2d 189, 198 (Iowa 2022). Demers raises three claims in this appeal that he is precluded from litigating because he did not preserve error in the district court.

First, he challenges the NCO “severely restricting contact with his children.” But he only preserved error on the objection to the NCO involving B.D. The defense not only failed to object to the NCO covering A.R.D., but counsel affirmatively stated they had “no objection” to that NCO. Second, he argues that the district court improperly took judicial notice of A.R.D.’s victim impact statement.² But at the sentencing hearing, defense counsel had no objection to the court reviewing A.R.D.’s statement. Third, Demers failed to raise a procedural due process claim at the sentencing hearing. See *State v. Gordon*, 921 N.W.2d 19, 23 (Iowa 2018) (noting “distinctions between claiming the sentence is intrinsically unconstitutional and claiming errors in the proceedings prior to imposition of sentence”). Because Demers failed to bring that issue to the attention of the district court, we cannot review it here. See *id.* at 24. Thus, the only issues fit for review are the district court’s determination that B.D. was a victim of his father’s crime against A.R.D. and Demers’s substantive due process claim that the NCO violates his fundamental liberty interest in parenting.

² Victims, like A.R.D., may file a signed, written statement to be provided to the court at sentencing. Iowa Code § 915.21(1)(a). Before considering its sentencing options, the district court may examine all pertinent information, including victim impact statements. *Id.* § 901.5.

V. Analysis

A. Substantial Evidence to Support Entry of Permanent NCO

Demers contends that because he was not convicted of a charge relating to B.D., the NCO prohibiting contact with his younger son was improper. He invokes *State v. Wiederien* for the proposition that district courts lack authority to extend a NCO when a defendant is acquitted on the criminal charge, even if the victim continues to feel “nervous and afraid.” 709 N.W.2d 538, 542 (Iowa 2006).

But the State alleged, and the district court agreed, that B.D. was the “victim” of Demers’s third-degree harassment against A.R.D. as that term is defined in Iowa Code section 664A.1(3).³ The court expounded on the statutory definition: “That does not require that they be the actual person who the public offense was directed towards, but obviously in this case, [B.D.] was present. He did suffer an emotional harm.” The court quoted B.D.’s testimony that he was “worried” about his brother who “appeared shaken up” by their father’s harsh treatment.

The court also considered the testimony of B.D.’s mother, Nicole, who assessed B.D.’s condition after the events with A.R.D. unfolded. B.D. told his mother that he didn’t see A.R.D. that whole weekend. She recalled asking B.D. how he felt and “he just kind of shrugged his shoulders.” Nicole said that B.D. hesitated to talk about his father’s prosecution.

Q. Let’s start with before the trial happened, what can you tell us about [B.D.]’s reaction or relationship to the court stuff that was happening regarding [A.R.D.], if any? A. He would just—I don’t want

³ Iowa Code section 664A.1(3) defines “victim” as “a person who has suffered physical, emotional, or financial harm as a result of a public offense, as defined in section 701.2, committed in this state.”

to say making excuses, but he would just say my belly hurts today, I don't feel good. I would just kind of get the whole I don't feel well talking about it. He did that several times.

Q. Okay. And then as you were coming up to the date of the trial itself, how was [B.D.] feeling about the trial or how was he reacting to that prospect? A. He asked if I knew what was going to happen. I told him I didn't. He asked if he could stay home from school and I said why and he said because I have a stomachache and I don't feel good.

B.D.'s mother chalked B.D.'s symptoms up to "anxious feelings" about the upcoming proceedings. Once B.D. took the stand to testify, his mother noticed that he "didn't look over at his dad" and was "not comfortable" talking about what happened. Since the trial, B.D. has not asked his mother about seeing Demers. Overall, Nicole described B.D. as "nonconfrontational" and a "quiet child." She feared that B.D. would be reluctant to report if anything went wrong during an unsupervised visit with his father.

When looking at the sum of the evidence, the district court found that B.D., as a witness in proximity to the crime committed against his brother, suffered emotional harm. We find substantial proof in the record to support that finding. It is clear to us that by witnessing his father's dehumanizing treatment of his older brother, B.D. suffered emotional harm. See *In re D.R.*, No. 15-1968, 2016 WL 1129385, at *5 (Iowa Ct. App. Mar. 23, 2016) (discussing how domestic violence harms children who witness it). That harm was enough for the court to find that B.D. qualified as a "victim" of the third-degree harassment conviction under Iowa Code section 664A.1(3).

In the alternative, we agree with the State that the district court had authority to name B.D. as a protected party under the NCO because he was a member of A.R.D.'s immediate family. See Iowa Code § 664A.1(1) (defining NCOs); *cf. State*

v. Lopez, 872 N.W.2d 159, 175 (Iowa 2015) (interpreting phrase “immediate family members” in Iowa Code section 915.10(3) as spouses and persons related within the second degree of consanguinity or affinity); *State v. Allen*, 304 N.W.2d 203, 207 (Iowa 1981) (explaining that half-siblings are related by the second degree of consanguinity).

B. Substantive Due Process

The substantive component of the Due Process Clause of the Fourteenth Amendment provides heightened protection against state interference with fundamental rights and liberty interests. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The liberty interest of a parent “in the care, custody, and control of their children” is “perhaps the oldest of the fundamental liberty interests recognized” by our courts. *Id.* When—as here—fundamental rights are at stake, we apply a strict scrutiny standard. See *Santi v. Santi*, 633 N.W.2d 312, 317 (Iowa 2001). The infringement on parental liberty interests implicated by the government intrusion must be “narrowly tailored to serve a compelling state interest.” *Id.* at 318 (citation omitted).

Demers claims that by issuing the NCO, the district court violated his liberty interest in parenting his children. We disagree. Issuing the no-contact order under Iowa Code section 664A.5 survives strict scrutiny because it is narrowly tailored to the State’s compelling interest in protecting B.D. from future harm. See *Epping*, 878 N.W.2d at 279. The principle that the State may not “inject itself into the private realm of the family” does not apply when parents imperil their children. *Id.* (citation omitted). Demers’s conviction of third-degree harassment rebuts the presumption of parental fitness. See *id.* Thus, Demers has not established a violation of his

right to substantive due process. See *State v. Lynch*, No. 20–0075, 2021 WL 2453362, at *6 (Iowa Ct. App. June 16, 2021) (relying on *Epping* to find a section 664A.5 NCO survives strict scrutiny).

VI. Conclusion

Because B.D. was the victim (or an immediate family member of the victim) of Demers’s public offense of third-degree harassment, the court had authority to impose a five-year NCO. And the NCO did not violate Demers’s right to substantive due process because the statutory protection was narrowly tailored to a compelling state interest in protecting the child victim.

AFFIRMED.