

IN THE COURT OF APPEALS OF IOWA

No. 2-256 / 11-0729
Filed April 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL HAVILAND,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, James D. Birkenholz,
District Associate Judge.

Michael Haviland appeals from a district court ruling extending a no-
contact order pursuant to Iowa Code section 664A.8 (2011). **AFFIRMED AS
MODIFIED.**

Ryan R. Gravett of Oliver Law Firm, P.C., Windsor Heights, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney
General, John P. Sarcone, County Attorney, and Linda K. Zanders, Assistant
County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and Mullins, JJ.

MULLINS, J.

Michael Haviland appeals from a district court ruling extending a no-contact order for five years pursuant to Iowa Code section 664A.8 (2011). He contends the district court did not have the authority to extend the no-contact order because the order had expired, and the district court's finding that he continued to pose a threat to the safety of the victim was not supported by the evidence. We affirm.

I. Background Facts and Proceedings.

On April 21, 2010, Haviland pled guilty to harassment in the third degree in violation of Iowa Code section 708.7(4) (2009). Pursuant to his guilty plea, Haviland received a deferred judgment, was placed on probation for twelve months, and had a no-contact order entered which prohibited him from having contact with the victim of the crime, Melissa Phillips. The no-contact order was to remain in effect through April 21, 2011.

In December 2010, Haviland was found guilty of violating the no-contact order, and was sentenced to seven days in jail.

On April 18, 2011, the State filed a motion requesting the district court extend the no-contact order for an additional five years. The district court set the matter for a hearing on April 27, 2011.

At the outset of the hearing, Haviland argued that the district court no longer had the authority to extend the no-contact order because it expired on April 21 and therefore no longer existed. He further noted that he had been

released from probation and his record was being expunged pursuant to the deferred judgment. After argument from both sides, the district court determined:

[T]he legislature has placed the burden upon the State or the victim to file the application, but the only requirement is that it be filed within 90 days of the expiration of a modified No Contact Order.

There is no language here that requires the hearing to be held prior to the expiration date of the in force, in effect No Contact Order.

. . . .

So, I believe the State has complied with the requirements of [section] 664A.8 and they are entitled to have a hearing on their request to extend the No Contact Order.

The hearing then proceeded to the merits. Phillips testified that she has observed Haviland violate the no-contact order on seventeen occasions, although only twice since the violation hearing in December 2010. Phillips stated that she did not call the police for each violation because she “had been on the way somewhere and I didn’t know how long I had to file them. Some of it I would have to take off time from work to go to the police station.” Phillips testified that she continues to fear Haviland because she believes he purposely drives by places he knows she will be in order to “make his presence known.” Phillips did concede that Haviland has never assaulted her or threatened to assault her.

Haviland and his supervisor, Miles Loomis, both testified that Haviland’s employment requires him to drive between several schools in Des Moines. Loomis testified that preventive measures have been taken since the December 2010 violation to help limit the possibility of Haviland being on the east side of Des Moines, where Phillips lived. Haviland testified that he has never seen Phillips outside of court appearances. He also testified that he has never

threatened or assaulted Phillips. Haviland testified that he was resisting the extension of the no contact order because it had a major effect on his employment.

Following the evidence, the district court held that it was unable to find that Haviland no longer posed a threat to Phillips due to the violation in December 2010, the allegations of numerous additional violations, and Phillips' testimony that she still believed her safety is at risk. Therefore, the district court extended the no-contact order for five years through April 27, 2016. Haviland appeals.

II. Standard of Review.

We review questions of statutory interpretation as well as challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Hennings*, 791 N.W.2d 828, 832 (Iowa 2010) (sufficiency of the evidence); *State v. Weiderien*, 709 N.W.2d 538, 540 (Iowa 2006) (statutory interpretation). In determining the sufficiency of the evidence, the district court's findings of fact are binding on appeal if supported by substantial evidence. *State v. Hall*, 287 N.W.2d 564, 565 (Iowa 1980).

III. Analysis.

A. Court's Authority to Extend. Haviland contends that even though the State filed the request to extend the no-contact order prior to its expiration, the district court did not have the authority to order extension after the no-contact order expired. The relevant code section provides:

Upon the filing of an application by the state or by the victim of any public offense referred to in section 664A.2, subsection 1 which is filed within ninety days prior to the expiration of a modified no-contact order, the court shall modify and extend the no-contact

order for an additional period of five years, unless the court finds that the defendant no longer poses a threat to the safety of the victim, persons residing with the victim, or members of the victim's family. The number of modifications extending the no-contact order permitted by this section is not limited.

Iowa Code § 664A.8 (2011).

When interpreting a statute, our primary goal is to give effect to the intent of the legislature. *State v. Walker*, 804 N.W.2d 284, 290 (Iowa 2011). "We seek a reasonable interpretation which will best effectuate the purpose of the statute and redress the wrongs the legislature sought to remedy." *State v. Johnson*, 528 N.W.2d 638, 640 (Iowa 1995).

The purpose of a no-contact order is to protect victims of certain public offenses from harm or harassment. See Iowa Code § 664A.1(1) (defining "No-contact order"). Section 664A.8 provides an increased layer of protection by providing victims the opportunity to have their no-contact order extended for additional five year periods if the defendant continues to pose a threat to the safety of the victim. It is reasonable to believe the legislature did not intend for victims to lose this protection when they file a timely application, but the district court is unable to hear the matter before the expiration of the no-contact order. Adopting Haviland's argument would frustrate the protective purpose of the statute. In addition, at a time when budget cuts have already hindered access to the court system, we doubt the legislature would intend for a victim's protection to be lost simply because the district court is unable to hear the request due to reduced hours and closures or the backlog created by such reduced hours and closures. Although Haviland argues that this determination creates a "grey area"

where it is uncertain whether the no-contact order is in effect, we need not address this possible issue since it is not alleged that Haviland committed any violations of the no-contact order during this “grey area” time period.

Here, the State complied with the requirements of section 664A.8 by requesting an extension of the no-contact order three days before its expiration. Since an extension request was properly initiated before the expiration of the no-contact order, the district court retained its authority to extend the no-contact order even though the order technically expired before the extension hearing was completed. See, e.g., *State v. Jensen*, 378 N.W.2d 710, 711-13 (Iowa 1985) (holding the district court does not lose jurisdiction of a probation revocation proceeding that has been commenced but not completed before the probation period expires). Accordingly, we find the district court correctly determined it had the authority to extend the no-contact order, but that such extension should run from the expiration date of the prior order, not from the date of the hearing or the entry of the extension order. See Iowa Code § 664A.8 (only permitting extensions in five-year periods).

B. Evidence of Continued Threat. Haviland mis-frames the issue as a challenge to the district court’s determination that he continued to pose a threat to Phillips. The issue for the court is, however, whether the evidence establishes that Haviland no longer poses a threat to Phillips.

Phillips testified she continued to be afraid of Haviland, and has on numerous occasions observed Haviland to be in violation of the no-contact order. Haviland was found to have violated the no-contact order in December 2010.

Although Haviland denied seeing Phillips and testified to the protective measures he has taken since the violation to avoid seeing her, we conclude that Phillips' testimony and the violation of the no-contact order are substantial evidence in support of the district court's decision that it could not find Haviland no longer poses a threat to Phillips' safety.

IV. Conclusion.

Because the district court had the authority and the evidence fails to prove that there is no longer a threat, we affirm the district court's extension of the no-contact order, but modify the expiration date to April 21, 2016.

AFFIRMED AS MODIFIED.