

STATE OF MINNESOTA

IN SUPREME COURT

A16-0378

Court of Appeals

Lillehaug, J.

In the Matter of: Tracy Elizabeth Thompson and o/b/o Minor Child,

Appellant,

vs.

Filed: January 31, 2018
Office of Appellate Courts

John Patrick Schrimsher,

Respondent.

Bradford Colbert, Saint Paul, Minnesota, for appellant.

Cathryn C. Schmidt, Victoria A. Elsmore, Amy M. Krupinski, Collins, Buckley, Sauntry & Haugh, P.L.L.P., Saint Paul, Minnesota, for respondent.

Elizabeth J. Richards, Brianna H. Boone, Minnesota Coalition for Battered Women, Saint Paul, Minnesota;

Rana Alexander, Standpoint, Minneapolis, Minnesota;

Caroline S. Palmer, Minnesota Coalition Against Sexual Assault, Saint Paul, Minnesota;
and

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for amicus curiae Minnesota Chapter of the American Academy of Matrimonial Lawyers.

S Y L L A B U S

1. Under the Domestic Abuse Act, Minn. Stat. § 518B.01 (2016), a petitioner establishes “domestic abuse” by showing that “physical harm, bodily injury, or assault” has occurred, irrespective of when it occurred. Upon that showing, the district court has the discretion, based on all of the relevant circumstances, to grant or deny a petition for an order for protection.

2. The district court did not abuse its discretion by granting appellant’s petition for an order for protection against respondent.

Reversed.

O P I N I O N

LILLEHAUG, Justice.

In September 2015, appellant Tracy Thompson petitioned for an order for protection (“OFP”) against respondent John Schrimsher. The petition was based largely on allegations of physical abuse from summer 2011 through spring 2012. We granted review to decide whether past physical abuse, standing alone, can support the issuance of an OFP under the Domestic Abuse Act (“the Act”), Minn. Stat. § 518B.01 (2016). Because the

plain language of the Act imposes no temporal requirement on when the “domestic abuse” occurred, we reverse the decision of the court of appeals.

FACTS

Appellant Tracy Thompson and respondent John Schrimsher began a romantic relationship in 2009. After several months they moved in together, and thereafter the couple moved to Georgia. In January 2012, their child, K.M.S., was born.

In April 2012, following many alleged instances of domestic abuse, Thompson moved back to Minnesota with K.M.S. Schrimsher remained in Georgia. In July 2012, Thompson petitioned for an OFP against Schrimsher in Hennepin County. The district court issued an ex parte order and set a hearing date, but dismissed the matter when Thompson failed to attend the hearing. She stated that she did not attend the hearing because she “was terrified of what was going to happen.”

That same summer Schrimsher brought a custody action in Georgia state court. The court gave Thompson and Schrimsher joint legal custody of K.M.S., but awarded primary physical custody to Thompson.

In March 2015, Schrimsher brought a contempt action against Thompson in Ramsey County, claiming that she had failed to accommodate his visitation rights under the Georgia court order. In September 2015, before a hearing could be held, Schrimsher dismissed the action. Shortly thereafter Thompson filed a new pro se OFP petition in Ramsey County for herself and K.M.S. The court issued an ex parte OFP and then held an evidentiary hearing.

Thompson and Schrimsher testified at the hearing. Thompson recounted many instances of physical abuse beginning in 2010, including being kicked, choked, knocked over, and slapped, some of which occurred while she was pregnant. Schrimsher denied all of her allegations and claimed that Thompson had physically abused him.

The district court issued a new OFP preventing Schrimsher from contacting Thompson. In its order, the court found that Thompson had “established a course of conduct that [Schrimsher] has and continues to terrorize her . . . [S]ince the time the parties resided together in 2010, [he] has mentally, physically, and sexually abused her.” The OFP had a duration of two years.

Schrimsher appealed, and the court of appeals reversed in an unpublished decision. Acknowledging that “the district court found credible the testimony that there existed a past history of domestic abuse,” the court nevertheless held that “[i]t is well-settled that a finding of past domestic abuse alone is insufficient to support the issuance of an OFP without a showing of a present intent to cause or inflict fear of imminent physical harm.” *Thompson v. Schrimsher*, No. A16-0378, 2017 WL 74372, at *2–3 (Minn. App. Jan. 9, 2017) (citing *Bjergum v. Bjergum*, 392 N.W.2d 604, 606 (Minn. App. 1986)). Because “the district court’s finding of domestic abuse was mostly, if not entirely, based on past domestic abuse that occurred more than three years earlier,” *id.* at *2, the court of appeals held that the “issuance of the OFP was improper,” *id.* at *3.¹ We granted Thompson’s petition for review.

¹ The OFP granted in favor of K.M.S., which was overturned by the court of appeals, is not at issue in this appeal.

ANALYSIS

I.

The first issue for us to address is whether the court of appeals correctly concluded that past physical abuse, standing alone, does not constitute “domestic abuse” sufficient to support the issuance of an OFP. This requires us to interpret provisions of the Act. “Statutory interpretation is a question of law, which we review de novo.” *State v. Jones*, 848 N.W.2d 528, 535 (Minn. 2014).

“The goal of all statutory construction is to effectuate the intent of the legislature.” *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 759 (Minn. 2010). In effectuating the Legislature’s intent, “the entire Domestic Abuse Act must be examined.” *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 527 (Minn. 2012); *see also State v. Gaiovnik*, 794 N.W.2d 643, 647 (Minn. 2011) (“[W]e do not examine different provisions in isolation.”). This analysis begins with the plain language of the statute. *A.A.A. v. Minn. Dep’t of Human Servs.*, 832 N.W.2d 816, 819 (Minn. 2013). “If the statute is clear and not ambiguous, then we apply its plain and ordinary meaning.” *Id.*

Thompson argues that the plain language of the Act’s definition of “domestic abuse” does not require that the “physical harm, bodily injury, or assault” be present at the time of filing a petition for an OFP. Schrimsher disagrees, arguing that, reading subdivision 2(a)(1) of the Act together with subdivision 2(a)(2), a showing of past “physical harm, bodily injury, or assault” is not enough to grant an OFP; rather, the “physical harm, bodily injury, or assault” must have happened recently or be “imminent.”

The Act “was enacted in 1979 to provide an efficient remedy for victims of abuse as an alternative to other available legal remedies.” *State v. Errington*, 310 N.W.2d 681, 682 (Minn. 1981). It accomplishes this objective by creating a cause of action “known as a petition for an order for protection.” Minn. Stat. § 518B.01, subd. 4.

A petitioner seeking an OFP must “allege the existence of domestic abuse” by affidavit, including the “specific facts and circumstances from which relief is sought.” *Id.*, subd. 4(b). Once an OFP petition is filed, and “upon notice and hearing,” the court may grant various forms of discretionary relief “for a period not to exceed two years, except when the court determines a longer period is appropriate.” *Id.*, subd. 6(a)–(b).

No relief is available, however, unless a petitioner first shows that “domestic abuse” has occurred. *Id.*, subd. 4(b). Subdivision 2(a) of the Act defines “domestic abuse” in three ways:

(a) “Domestic abuse” means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault;
or

(3) terroristic threats . . . ; criminal sexual conduct . . . ; or interference with an emergency call

In this case, Thompson invoked the first of these definitions—“physical harm, bodily injury, or assault.” *Id.*, subd. 2(a)(1).

The plain language of subdivision 2(a)(1) does not require that the “physical harm, bodily injury, or assault” has occurred within a specified time before the petition is filed or be imminent. The definition simply requires that “physical harm, bodily injury, or assault” has occurred at some point. It would be inappropriate for us to read a temporal requirement,

or the word “imminent,” into a statutory definition when no such requirement appears in the text. *See State v. Wenthe*, 865 N.W.2d 293, 304 (Minn. 2015) (“[C]ourts cannot supply that which the legislature purposely omits or inadvertently overlooks.” (quoting *Wallace v. Comm’r of Taxation*, 184 N.W.2d 588, 594 (Minn. 1971))).

By contrast, an alternative definition of “domestic abuse,” subdivision 2(a)(2), expressly defines “domestic abuse” as “the infliction of fear of *imminent* physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a)(2) (emphasis added). Contrary to Schrimsher’s request, we cannot meld subdivisions 2(a)(1) and (2).

Specifically, the Act lays out three definitions of “domestic abuse,” each separated by an “or.” Minn. Stat. § 518B.01, subd. 2(a). “Or” is a disjunctive term, “requiring that only one of the possible factual situations linked by the ‘or’ be present.” *State v. Bakken*, 883 N.W.2d 264, 268 (Minn. 2016). Because the definitions are disjunctive, a plaintiff can establish “domestic abuse” by demonstrating that the facts fit any one of the three definitions. *See Baker v. Baker*, 494 N.W.2d 282, 285 (Minn. 1992) (“[The Domestic Abuse Act] requires a demonstration of physical harm, *or* fear, *or* sexual misconduct” (emphasis added)). Each definition is independent of the others. We cannot create a new, hybrid definition.

Indeed, the remainder of the Act tells us that, when the Legislature wanted to impose a temporal requirement, it knew how to do so. In addition to subdivision 2(a)(2), two other subdivisions of the Act contain temporal language. Subdivision 7(a) requires a petitioner to allege an “immediate and present danger of domestic abuse” before an OFP may be issued *ex parte*. Minn. Stat. § 518B.01, subd. 7(a). Similarly, subdivision 6(i) requires the

court to “determine by a preponderance of evidence if an abusing party poses an imminent risk of causing another person substantial bodily harm” before it can order law enforcement to “take immediate possession of all firearms in the abusing party’s possession.” *Id.*, subd. 6(i). The fact that specific temporal language does not appear in subdivision 2(a)(1) suggests that to obtain an ordinary OFP—one that is not granted ex parte and does not call for the seizure of the abuser’s firearms—the petitioner need not demonstrate that the danger of physical harm is immediate or imminent.

The court of appeals thus erred when it concluded, as a matter of law, that “a finding of past domestic abuse alone is insufficient to support the issuance of an OFP without a showing of a present intent to cause or inflict fear of imminent physical harm.” *Thompson*, 2017 WL 74372, at *2. The court’s erroneous interpretation of “domestic abuse” was based on the rule it had articulated in *Kass v. Kass*, 355 N.W.2d 335 (Minn. App. 1984). In *Kass* the court interpreted “domestic abuse” to “require either a showing of present harm, or an intention on the part of appellant to do present harm.” *Id.* at 337. 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.”² Therefore, we overrule *Kass* to the extent that its interpretation of subdivision 2(a)(1) deviates from our analysis here.

² When *Kass* was decided, the definition of “domestic abuse” was: “(i) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault . . . or (ii) criminal sexual conduct” Minn. Stat. § 518B.01, subd. 2(a) (1982) (emphasis added). The definition was modified into its current form in 1995. Act of May 25, 1995, ch. 226, art. 7, § 3, 1995 Minn. Laws 1753, 1881. But even the 1982 definition had a disjunctive “or” between the “physical harm, bodily injury, assault” portion of the definition and “the infliction of fear of imminent physical harm, bodily injury, or assault” portion.

Schrimsher argues that our interpretation will create absurd results because it makes it possible for a district court to grant an OFP based on a single, isolated incident of “domestic abuse” that occurred years ago. Schrimsher far overstates this risk. Under the Act, OFPs are never granted automatically. Instead, once a petitioner has “allege[d] the existence of domestic abuse,” the district court “shall order a hearing.” Minn. Stat. § 518B.01, subds. 4(b), 5(a). After this hearing, “the court *may* provide relief.” *Id.*, subd. 6(a) (emphasis added). “May” means “[t]o be allowed or permitted to.” *The American Heritage Dictionary of the English Language* 1086 (5th ed. 2011); *see also* Minn. Stat. § 645.44, subd. 15 (2016) (“ ‘May’ is permissive”). The district court’s decision is discretionary.

In other words, once “domestic abuse” has been established, the district court may examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP. Relevant circumstances may include, but are not limited to, the timing, frequency, and severity of any alleged instances of “domestic abuse,” along with the likelihood of further abuse.

For these reasons, we hold that, under subdivision 2(a)(1) of the Act, a petitioner need only show that “physical harm, bodily injury, or assault” has actually occurred, regardless of *when* it occurred, to satisfy the first definition of “domestic abuse.”

II.

Having determined that “domestic abuse” can be established by alleging and showing past “physical harm, bodily injury, or assault,” we turn to the question of whether the district court abused its discretion when it granted Thompson’s OFP petition.

We review the decision to grant an OFP for an abuse of discretion. *See Coons*, 818 N.W.2d at 526. A district court abuses its discretion “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). We give deference “to the opportunity of the trial court to assess the credibility of the witnesses.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

Here, the district court did not abuse its discretion by granting an OFP. Thompson testified to a general pattern of abuse occurring from 2010 to 2012. Thompson further testified to multiple specific incidents of kicking, choking, and slapping, including an occasion during which Schrimsher dragged her down a hallway, threw her onto a bed, and attempted to handcuff her. This testimony led the district court to find that Schrimsher “mentally, physically, and sexually abused” Thompson. As the court of appeals noted, “the district court found credible the testimony that there existed a past history of domestic abuse.” *Thompson*, 2017 WL 74372, at *3. Thompson satisfied the statutory definition of “domestic abuse.”

The district court also found that, although the domestic abuse had occurred in the past, it was “a course of conduct that . . . has and continues to terrorize” Thompson. Speaking from the bench, the court further found that Schrimsher “continues, through means that he is very aware of . . . to control and disrupt [Thompson’s] life.” In issuing the two-year OFP, the district court considered the relevant circumstances proven by Thompson, including the timing, frequency, and severity of the domestic abuse, as well as the likelihood of further abuse. Plainly, the district court did not abuse its discretion.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court to reinstate the order for protection.

Reversed.