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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1345**

In the Matter of: Jessica Jo O’Leary, petitioner,
Respondent,

vs.

Trent Gerald Soukkala,
Appellant.

**Filed May 1, 2017
Affirmed
Stauber, Judge**

Carlton County District Court
File No. 09-FA-16-138

Brittany L. Kubes, Legal Aid Service of Northeastern Minnesota, Duluth, Minnesota (for respondent)

Scott A. Buchanan, Indian Legal Assistance Program, Duluth, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Stauber, Judge; and
Klaphake, Judge.*

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

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from an order denying a motion to modify an order for protection (OFP), appellant argues that the district court abused its discretion by (1) temporarily awarding respondent-victim the use of appellant's home after the non-married couple separated and (2) awarding respondent one-half of the proceeds of appellant's 2015 state and federal tax refunds. We affirm.

FACTS

Respondent Jessica O'Leary and appellant Trent G. Soukkala were in a romantic relationship for almost twenty years and have two children together. The children were born in 2013 and 2015. Respondent was a stay-at-home mom after the birth of the parties' first child, although she had previously worked as a card dealer.

On January 22, 2016, respondent petitioned for an OFP, alleging that while they were in the same vehicle, appellant "back handed me; also grabbed my disabled hand twisted it again. Busted my lip to the point where teeth were bloody, lip was cut." The petition also alleges that in a prior assault in September, appellant crushed her finger, causing her to have no use of that finger." The petition further alleged that since September, the following five incidents occurred: (1) appellant slapped respondent in the mouth and twisted her injured hand; (2) appellant nearly drove respondent and the children off the road; (3) with his hand around her neck, appellant threw respondent to the ground; (4) while attempting to grab respondent's face, appellant stuck a finger up her nose, causing her nose to bleed profusely; and (5) appellant head-butted respondent off

the porch stairs. Finally, the petition also alleges that respondent had previous domestic abuse no-contact orders and had made numerous calls to law enforcement.

Following a hearing in February 2016, the district court issued an OFP under Minn. Stat. § 518B.01, subd. 6 (2016). In the OFP, the district court awarded respondent “use and possession of the [parties’] shared residence” in Cloquet, and one-half of appellant’s 2015 “state and federal tax refunds.”

On April 15, 2016, respondent moved to modify the OFP, seeking a deadline for appellant to pay the portion of the tax refund awarded to her. In her supporting affidavit, respondent stated that she had “applied for public housing” but was on a waiting list. The district court continued the hearing and directed appellant “to bring his original tax return, his amended tax return and bank records” to the next hearing, which he did not do. During the interim, appellant served but did not file a motion to modify the OFP.¹

At a May 26, 2016 hearing, appellant argued that the district court’s OFP violated Minn. Stat. § 513.075 (2016) (“anti-palimony” statute), because the parties were not married and did not have a valid cohabitation contract, which appellant claimed divested the district court of jurisdiction over the matter. Respondent argued that the property was awarded to respondent under the domestic-abuse act, Minn. Stat. § 518B.01 (2016), and not under the anti-palimony statute and that appellant had failed to show, for purposes of modifying the original OFP, that there was a material change in circumstances or factual grounds for altering the original award.

¹ Appellant filed the motion on the same date as the hearing on respondent’s motion to modify the OFP, May 26, 2016.

The district court issued an order denying appellant’s motion to modify the OFP on July 20, 2016. The district court awarded respondent “use of the homestead until such time as she receives HRA housing, pursuant to the OFP . . . filed on February 16, 2016,” ordered appellant “to pay one-half of his . . . tax refund to [respondent] pursuant to the OFP . . . filed on February 16, 2016,” and directed appellant to comply with the order within 30 days. In support of this decision, the district court made the following three determinations: (1) the anti-palimony statute did not apply because the case did not involve “two unmarried parties cohabitating, and one making a claim to the property of the other based on the contemplation of sexual relations”; (2) the domestic-abuse act, Minn. Stat. § 518B.01, subd. 6(5), authorized the district court to grant relief that included support from appellant to respondent; and (3) the domestic-abuse act authorized the district court to order appellant to pay restitution for lost income that respondent suffered because of injuries inflicted by appellant. This appeal followed.

D E C I S I O N

The district court may modify an OFP if the party seeking modification proves “by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting . . . the order for protection no longer apply and are unlikely to occur.” Minn. Stat. § 518B.01, subd. 11(b). “The preponderance of the evidence standard requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists.” *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004). A district court has “broad discretion in crafting and issuing orders for protection,” *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App.

2007), and the decision whether to grant relief under section 518B.01 is discretionary. *Mechtel v. Mechtel*, 528 N.W.2d 916, 920 (Minn. App. 1995).

A party may appeal from “an appealable order within 60 days after service by any party of written notice of its filing.” Minn. R. Civ. App. P. 104.01, subd. 1. “Even though the decision of the [district] court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired.” *Dieseth v. Calder Mfg. Co.*, 275 Minn. 365, 370, 147 N.W.2d 100, 103 (1966). When an “original order [is] appealable and no appeal was taken from it during the time within which that could be done, it is a final adjudication of the question . . . and bars the second suit.” *Id.* Here, the OFP was filed on February 16, 2016, and appellant did not challenge the OFP until May 26, 2016, well past the 60-day appeal period. Thus, the OFP became final, and appellant is barred from raising the same issues that were addressed and decided by the district court in issuing the OFP. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that a party may not “obtain review by raising the same general issue litigated below but under a different theory”). In addition, appellant sought modification of the OFP without offering any evidence to show a “material change in circumstances.” Appellant therefore failed to meet this evidentiary burden established by Minn. Stat. § 518B.01, subd. 11(b).

Finally, we note that Minn. Stat. § 518B.01, subd. 6(a)(2), authorizes the district court to grant broad relief in an OFP, including the authority to “exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner.” In granting this relief, the statutory language does not distinguish between whether one of

the parties is the titled owner of the “dwelling” in which the parties lived, although the statute includes the proviso that “[n]othing in this section shall affect the title to real estate.” Minn. Stat. § 518B.01, subd. 12. In addition, the domestic-abuse statute permits the district court to order the abusing party to “pay restitution to the petitioner,” *id.* at subd. 6(a)(11), or to order any “other relief as it deems necessary for the protection of a family or household member.” *Id.*, subd. 6(a)(13). Respondent submitted an affidavit stating that she is unable to work in her previous profession as a card dealer because appellant seriously injured her finger. Given this evidence, the district court’s award of one-half of appellant’s 2015 tax refunds to respondent as restitution was within the district court’s discretion.

For all of these reasons, we conclude that the district court did not abuse its discretion by denying appellant’s motion to modify the OFP.

Affirmed.