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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0439**

In the Matter of:
Joanne Lynn Kargel Lund, petitioner,
Respondent,

vs.

Michael Alan Lund,
Appellant.

**Filed November 27, 2017
Affirmed
Kirk, Judge**

Hennepin County District Court
File No. 27-DA-FA-17-208

Joanne Lynn Kargel Lund, Brooklyn Center, Minnesota (pro se respondent)

Tory J. Langemo, Halvorson, Langemo & Paschke, Buffalo, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Schellhas, Judge; and Kirk,
Judge.

U N P U B L I S H E D O P I N I O N

KIRK, Judge

Appellant-husband challenges the district court's issuance of an order for protection (OFP) in favor of respondent-wife, arguing that he was denied a "full hearing" under Minn. Stat. § 518B.01 (2016), and that there was not sufficient evidence in the record to support the OFP. We affirm.

FACTS

On January 10, 2017, respondent-wife Joanne Lynn Kargel Lund petitioned for an OFP against her husband, appellant-husband Michael Alan Lund.¹ The district court granted a two-year emergency ex parte OFP. The court found that the petition alleged “an immediate danger of domestic abuse.” Husband challenged the ex parte OFP, and a contested hearing was held on January 19.

In her petition, affidavit, and in her testimony at the contested hearing, wife alleged that husband caused her to be afraid for her safety by constantly badgering her, verbally harassing her, intimidating her, and having violent outbursts. Wife described an incident that occurred on Christmas 2015 when husband yelled, screamed, and threw and broke household items, and said that husband uses abrasive and violent language. Wife also indicated that on January 9, 2017, husband changed the locks to their house and barricaded the doors, causing her to have to break in. She stated that husband has been following her and that in the week before he was served with the ex parte OFP he sent her at least 500 text messages. Wife said that husband has a “violent temper” and that his behavior frightens her because he could easily hurt her.

Wife testified that she called the police after a physical altercation between the parties on June 21, 2014. The police report, which husband claims is false, stated that husband was “roughing [wife] up,” then left the scene. Husband testified that he went to a

¹ On appeal, wife did not file a responsive brief. On August 8, 2017, this court filed an order directing that this matter proceed on the merits pursuant to Minn. R. Civ. App. P. 142.03.

friend's house, but then testified that he did not leave the scene to go to his friend's house, and claimed that he and wife "went up to the cabin that weekend." Wife stated that husband has not physically assaulted her since that incident, but that the mental abuse and verbal harassment started in October 2012 and has continued. She testified that about a year ago husband was angry and driving erratically with her in the car and threatened to kill her.

When husband testified, he acknowledged that he changed the locks to the house, but also claimed that the locks were not changed at the time that wife alleges. Husband acknowledged that he sent wife 100 text messages and called her 29 times. He also said that he has 250 text messages that he sent to wife. Husband acknowledged that he and wife have argued, but claimed that he has not threatened her or threatened to kill her.

Husband intended to call his uncle and his sister as witnesses at the hearing. Neither of them were present when the police were called on June 21, 2014, or present in the car when wife alleges that husband threatened her life. Husband stated that his sister was present on January 9, 2017, when wife alleges that the locks were changed, and said that his sister would testify that husband never raised his voice. Husband also stated that his uncle would testify that on Christmas 2015 they talked politics and yelled, but that he did not break anything. The district court took husband's assertions about his uncle's and sister's testimony at face value, concluded that there was no need to hear from either witness, and did not make any findings that contradicted their anticipated testimony. Husband then attempted to raise financial issues related to the parties' pending divorce, and the district court ended the hearing.

After a recess, the district court granted the OFP, leaving it in place until January 10, 2019. The court found wife's testimony to be more credible than husband's due to his contradictory statements. The court also found that both the June 21, 2014 incident and the incident in the car when husband threatened to kill wife, occurred as wife described. The court further found that, with respect to the January 2017 incident, husband responded to "heated discussions" about the parties' pending divorce by taking "the rather extreme step of changing the locks on the residence that prevented [wife] from being allowed in her own home." The court also found that husband texted wife about 100 times and that although the content of the messages may not have been threatening, "the nature of sending so many texts, which . . . were unwanted, is threatening and would cause fear, especially when you combine it with all of the things that had happened previously." Husband appeals.

D E C I S I O N

I. Husband was not denied an adequate hearing under Minn. Stat. § 518B.01.

Evidence must be relevant in order to be admissible. *See* Minn. R. Evid. 402 (providing that "relevant evidence is admissible . . . [and e]vidence which is not relevant is not admissible"); Minn. R. Evid. 401 ("'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). "Evidentiary rulings are within the district court's sound discretion and will not be reversed absent an abuse of discretion." *Blatz v. Allina Health Sys.*, 622 N.W.2d 376, 388 (Minn.

App. 2001), *review denied* (Minn. May 16, 2001). “Reversible evidentiary error must be both an abuse of discretion and prejudicial.” *Id.*

On appeal, husband argues that he was denied his right to a “full hearing” when the district court declined to hear testimony from his witnesses, and cites to Minn. Stat. § 518B.01, subd. 7(a), for this principle. But Minn. Stat. § 518B.01, subd. 7, does not contain the “full hearing” language husband relies on, nor has it for many years. *See* 1995 Minn. Laws ch. 142, § 5, at 404; 2002 Minn. Laws ch. 304, § 10, at 442; *Oberg v. Bradley*, 868 N.W.2d 62, 65 (Minn. App. 2015). Currently, Minn. Stat. § 518B.01, subd. 7(c), provides that “[u]pon request, a hearing, as provided by this section, shall be set.” Husband also relies on *El Nashaar v. El Nashaar*, which was decided under the 1994 version of the statute, and argues that he was denied a “full hearing,” including “the right to present and cross-examine witnesses, to produce documents, and to have the case decided on the merits.” 529 N.W.2d 13, 14 (Minn. App. 1995).

Even if the “full hearing” language remained in Minn. Stat. § 518B.01, subd. 7, this case is distinguishable from *El Nashaar* where a hearing was held but no evidence was accepted. *El Nashaar*, 529 N.W.2d at 14. Here, husband was given the opportunity to cross-examine wife, to testify himself, and to make offers of proof regarding the anticipated testimony of his witnesses. Rather than hearing testimony from those witnesses, the district court accepted husband’s offers of proof at face value and focused its findings on evidence unaffected by the anticipated witnesses’ testimony. The district court concluded that the testimony of husband’s anticipated witnesses was not relevant to events they were not present for, nor was it helpful in addressing facts that husband already admitted. Declining

to hear irrelevant evidence is not an abuse of discretion, nor did the district court deny husband an adequate hearing.

Husband also argues that because he was not represented by an attorney at the OFP hearing, he was unable to make effective offers of proof regarding the relevance of the anticipated testimony of his witnesses. But the district court was required to hold him to the same standards it would have held an attorney to if appellant had been represented at the hearing. Minn. R. Gen. Pract. 1.04 (“Whenever these rules require that an act be done by a lawyer, the same duty is required of a self-represented litigant.”). And, furthermore, husband does not suggest that his witnesses could have provided additional relevant evidence. Instead, he asserts that they could have called wife’s credibility into question. On this record, the district court’s specific findings about the parties’ credibility could not have been affected by husband’s witnesses. Husband has not established that he was prejudiced by the exclusion of his witnesses’ testimony.

II. The district court’s findings are supported by sufficient evidence in the record.

Under Minn. Stat. § 518B.01, a petitioner seeking an OFP must meet the preponderance-of-the-evidence standard. See *Oberg*, 868 N.W.2d at 64 (holding that the preponderance-of-the-evidence standard applies to issuing an OFP, in addition to vacating or modifying an OFP). “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.” *Id.* at 65 (quoting *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004)). The district court may grant an OFP if it makes a finding of domestic abuse. Minn. Stat. § 518B.01, subd. 4. Domestic abuse includes, “if committed against a family or household

member,” “the infliction of fear of imminent physical harm, bodily injury, or assault.” *Id.*, subd. 2(a)(2). “[T]o establish domestic abuse, a party must show present harm or an intention on the part of the alleged abuser to do present harm.” *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005) (quotation omitted).

This court reviews a “district court’s decision to grant an OFP for an abuse of discretion.” *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). This court will find an abuse of discretion where the district court’s findings are not supported by evidence in the record, or where it has misapplied the law. *Id.* “We review findings for clear error, which means that the district court’s findings must be manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole, and we view the evidence in the light most favorable to the decision.” *Id.* (quotation omitted). “The district court is the exclusive judge of credibility.” *Id.*

Husband argues that the district court’s factual findings were clearly erroneous. Husband asserts that many of wife’s allegations were not specific enough and that the court failed to make specific findings regarding her allegations. These claims are not supported by the record. Husband also argues that the incident from 2014, and the incident from “about a year ago” involving the death threat, were too remote in time to be relevant. He asserts that the district court erred in finding that changing the locks and sending excessive text messages showed a present harm or intent to do present harm to wife. Husband asks this court to disregard the district court’s credibility determinations about wife’s allegations.

Here, the district court found that wife was “reasonably in fear that [husband] will engage in present harm to her,” based on its determination that wife was more credible than husband and that within the context of husband’s past violent actions, his current behavior reasonably caused wife to fear him. We defer to the district court’s credibility determinations. *Kush v. Mathison*, 683 N.W.2d 841, 843-44 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004). There is no basis to conclude on this record that the district court’s findings of fact were clearly erroneous.

Affirmed.