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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0519**

In the Matter of:
Emma Marie Welter, petitioner,
Respondent,

vs.

Richard Preston Blackwell,
Appellant.

**Filed January 16, 2018
Affirmed
Halbrooks, Judge**

Washington County District Court
File No. 82-FA-16-5007

Veena A. Iyer, Nilan Johnson Lewis, P.A., Minneapolis, Minnesota (for respondent)

Richard Preston Blackwell, St. Paul, Minnesota (pro se 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

HALBROOKS, Judge

Appellant challenges the district court's grant of an order for protection (OFP) to respondent on the grounds that (1) the district court erred by not granting his motions for an evidentiary hearing, (2) the district court made an improper award of custody of their child to respondent, and (3) the evidence is insufficient to support the OFP. We affirm.

FACTS

Appellant Richard Preston Blackwell and respondent-petitioner Emma Marie Welter lived together between 2006 and 2013 and have a child together. Blackwell has never established paternity of the child, and he and Welter never married.

On May 28, 2014, Welter obtained an OFP against Blackwell after an evidentiary hearing at which Blackwell testified that he “would rather [Welter] die as [his] wife than live as somebody’s whore.” Blackwell violated the May 28, 2014 OFP at least twice. The county charged Blackwell with felony stalking. While the stalking charge and an unrelated third-degree assault charge were pending, a district court deemed Blackwell incompetent to proceed, and the county petitioned for his judicial commitment. The district court granted the petition in April 2015. Blackwell’s commitment ended in August 2015.

The May 28, 2014 OFP expired on May 28, 2016. Six months later, Blackwell entered a restaurant where Welter, her daughter, and other family members were eating and sat at the table right next to them.¹ A few days later, Blackwell drove to Welter’s apartment and yelled out his car window.

Welter subsequently petitioned for an ex parte OFP, which the district court granted on November 23, 2016. On December 1, 2016, Blackwell came to Welter’s apartment and followed her daughter through the apartment building’s main door. Police responded and served Blackwell with the short-form notification of the ex parte OFP. The following

¹ Because Blackwell has never established paternity, we refer to the child as Welter’s daughter.

morning, the Washington County Sheriff's Office served Blackwell with the full ex parte OFP.

Blackwell requested a hearing under Minn. Stat. § 518B.01, subds. 5, 7 (2016). The district court granted Blackwell's request and scheduled a hearing for December 13, 2016. On December 9, 2016, Blackwell requested a continuance because he wanted to consult an attorney. The district court continued the hearing to January 12, 2017. Both parties appeared on January 12, but Blackwell did not have an attorney. As a result, the district court continued the hearing a second time and scheduled it for January 18, 2017. A Washington County sheriff deputy served Blackwell with the order continuing the hearing.

The district court held the evidentiary hearing on January 18, 2017, but Blackwell did not appear. Welter testified about the restaurant incident when Blackwell sat down at the table adjacent to her, her daughter, her father, and her brother. Welter testified that it made her feel "afraid for the safety of [her]self, as well as [her] daughter and [her] family." She also testified that two days later, she witnessed Blackwell driving in circles outside her apartment in the parking lot and yelling out the window. Welter stated that this incident made her feel "[e]xtremely scared."

Welter testified that she obtained an ex parte OFP on November 23, 2016, and that Blackwell came to Welter's apartment on December 1, 2016, and followed Welter's daughter into the apartment, frightening her daughter. Welter stated that Blackwell made contact with her and her daughter at 5:00 a.m. on December 31, 2016, when Blackwell came to Welter's mother's house where Welter and her daughter were sleeping. According to Welter, Blackwell "potentially could have gotten in" the house but Blackwell saw

Welter's brother and ran. Welter testified that she believed that Blackwell had followed her that night and that the incident made her feel "very afraid for [her] own safety and [her] daughter's."

The final incident that Welter described was when Blackwell appeared at her daughter's school on January 9, 2017, during the end-of-the-day dismissal and took her daughter with him. Welter's daughter, who was nine years old at the time, "was in tears when she told [Welter] about what happened." Although Blackwell eventually dropped off the child at Welter's apartment building, Welter testified she had "never been more afraid."

The district court granted Welter an OFP with a duration of ten years based on the fact that (1) Welter had an existing ex parte OFP against Blackwell that he had violated, (2) Welter reasonably feared physical harm by Blackwell, and (3) Blackwell had engaged in acts of harassment and stalking. The district court also checked two boxes in the OFP signifying that Blackwell had not established paternity and that Welter had sole legal and sole physical custody of her daughter under Minn. Stat. § 257.541 (2016).

Blackwell requested a new evidentiary hearing on February 2, 2017, explaining that he could not attend the January 18 hearing because he was "arrested on January 17" and "in custody at the Ramsey County Detention Center for a case unrelated to the hearing." The district court denied Blackwell's request for an evidentiary hearing, reasoning that Blackwell received notice of the hearing and inexcusably failed to appear.

On March 7, 2017, Blackwell filed another motion requesting an evidentiary hearing. The district court denied Blackwell's motion, again reasoning that the January 18

hearing proceeded by default because of Blackwell’s “inexcusable failure to appear.” This appeal follows.

D E C I S I O N

I.

Blackwell argues the district court erred by denying Blackwell’s two requests for an evidentiary hearing after he failed to appear at the hearing that was rescheduled twice at his request. We review the decision to grant or deny a request for an additional OFP evidentiary hearing for abuse of discretion. *See Gada v. Dedefo*, 684 N.W.2d 512, 513 (Minn. App. 2004) (applying abuse-of-discretion standard to review of a denial of a request to continue OFP hearing).

The district court explained in denying Blackwell’s motions that Blackwell had already requested and been granted two continuances, had notice of the January 18, 2017 hearing, and inexcusably failed to appear by getting arrested on January 17, 2017. The district court did not abuse its discretion by denying Blackwell’s requests for a new evidentiary hearing.

II.

Blackwell contends that the district court erred by making a custody determination. Blackwell’s argument lacks merit because the district court did not make any ruling on custody. In the January 18, 2017 OFP, the district court checked a box that states: “Paternity has not been decided by a Court, and the Court is not addressing issues of custody, parenting time (visitation), and support. (Under Minnesota law, where paternity has not been decided, sole physical and legal custody of a child is with the biological

mother.)” The district court also checked the box signifying that Welter has sole legal and physical custody of her daughter under Minn. Stat. § 257.541, subd. 1 (2016), which provides that an unmarried, biological mother of a child has sole custody of the child “until paternity has been established under sections 257.51 to 257.74, or until custody is determined in a separate proceeding under section 518.156.” Because Blackwell and Welter have never married and Blackwell has never established paternity, the district court accurately reflected the circumstances of this matter on the OFP and did not make any ruling concerning custody.

III.

Blackwell asserts that the evidence is insufficient to support the January 18, 2017 OFP because Welter was not reasonably in fear of harm and his mere presence does not constitute stalking and is “not an indicator to believe physical harm will arise.”

We review a district court’s decision whether to grant an OFP for abuse of discretion. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). “A district court abuses its discretion when its findings are not supported by record evidence or when it misapplies the law.” *Id.* On appeal, we review the findings serving as the basis for an OFP 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.” *Id.* (quotation omitted). “[W]e view the evidence in the light most favorable to the decision.” *Id.*

A district court may extend an OFP or grant a new order if a previous order has expired upon a showing that

- (1) the respondent has violated a prior or existing [OFP];
- (2) the petitioner is reasonably in fear of physical harm from the respondent;
- (3) the respondent has engaged in the act of stalking within the meaning of section 609.749, subdivision 2; or
- (4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

Minn. Stat. § 518B.01, subd. 6a(b) (2016).

There is sufficient evidence in this record to support the district court's decision to grant Welter an OFP. Welter testified that Blackwell appeared unexpectedly at her apartment, picked up her daughter from school without authorization, and came to Welter's mother's house while Welter and her daughter were staying there. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) ("Present intent to inflict fear of imminent physical harm, bodily injury, or assault can be inferred from the totality of the circumstances, including a history of past abusive behavior."). Welter credibly testified that each instance made her feel afraid and fearful for her and her daughter's safety.

Blackwell also argues the district court erred in finding that he violated the May 28, 2014 OFP and the November 23, 2016 ex parte OFP, reasoning that he "has no convictions related to violating orders." Blackwell's argument is misplaced. Minn. Stat. § 518B.01, subd. 6a (2016), requires that a district court find violations of an OFP, not convictions, to grant a subsequent OFP. In *Eckman*, we concluded that Minn. Stat. § 518B.01, subd. 6a does not require proof of convictions but "rather proof of violations of a previous OFP," stating that there is "a meaningful difference between the concepts of 'violation' and 'conviction'" and that "[h]ad the legislature intended that only convictions for violating an

OFP could serve as a basis for an increased term, it could easily have made that clear.” 812 N.W.2d at 896.

Because the district court’s findings are well-supported by the record, the district court properly exercised its discretion in granting Welter a ten-year OFP.

Affirmed.