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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0759**

In the Matter of:
Natasha June Marie Courtney, petitioner,
Respondent,

vs.

Barry Ishmael McReynolds,
Appellant.

**Filed February 26, 2018
Affirmed in part, reversed in part, and remanded
Ross, Judge
Concurring in part, dissenting in part, Worke, Judge**

Hennepin County District Court
File No. 27-FA-15-654

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Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Ross,
Judge.

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

ROSS, Judge

Appellant Barry McReynolds argues that the district court abused its discretion by extending an order for protection against him from two years to 50 years and from a 100-foot radius to a one-mile radius from the respondent's home. We affirm the temporal

extension but reverse and remand for the district court to reduce the geographic extension to comport with its stated reasons for it.

DECISION

Appellant Barry McReynolds challenges the district court's decision to extend an order for protection that was originally established to protect respondent Natasha Courtney, with whom McReynolds was engaged in an acrimonious child-custody dispute over their daughter. We review a district court's order for protection for an abuse of discretion. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). And an abuse of discretion occurs when the record does not support the findings or the district court misapplies the law. *Id.* We review the district court's findings for clear error. *Id.*

Under Minnesota's Domestic Abuse Act, a district court may extend an extant order for protection for up to 50 years if it finds that the restrained party has violated that order or a prior order more than twice. Minn. Stat. § 518B.01, subd. 6a(c)(1) (2016). McReynolds admits that he violated the extant order protecting Courtney. His brief acknowledges, "Technically, you could extend the order from these allegations. They are innocuous but obnoxious and the law only requires a violation." And he adds, "[T]here were a few technical violations of the order for protection and because of the one threat made, an extension of the order would be allowed under current Minnesota Law." Rather than challenge the district court's decision to extend the order, McReynolds mostly argues that the court's 50-year and one-mile radius expansions are unreasonable and, as such, constitute an abuse of discretion.

We see nothing indicating that the district court abused its discretion as to the temporal extension. The court saw some apparently alarming behavior. It found that McReynolds violated the existing order when, for example, he told Courtney that if she did not stop recording him at their daughter's school, she would "be on the news." He argues that his words were misconstrued, but the district court found Courtney's testimony credible and reasonably interpreted the statement as a threat. We are in no position on appeal to second guess the district court's credibility determination or its weighing of the evidence. *Gada v Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) ("We neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the [district court].").

The district court also found that McReynolds violated the existing order when he drove his car near Courtney's home and lingered while a man resembling his son exited the car and gave a toy to the parties' daughter and then hugged her. McReynolds maintained that, because his vehicle is a common model, it was simply mistaken for the one involved in the encounter. But the district court did not find his testimony credible and instead believed an eyewitness who testified that McReynolds was driving the car. Again, we do not revisit the district court's credibility assessment.

The district court also determined that McReynolds violated the existing order multiple times by anonymously sending numerous text messages and emails to Courtney. It found that, "based on the general content of the texts, based on the specific nicknames used, and based on the timing of the texts . . . they were very likely from respondent." The court observed that each text message and email constituted a separate violation of the

order for protection. That Courtney had changed her phone number more than once, yet continued to receive the text messages, persuaded the district court that McReynolds was “determined to violate the Order and harass [Courtney].”

McReynolds seeks to lessen the temporal extension by re-litigating the district court’s credibility determinations, mainly by providing alternative theories that cast doubt on Courtney’s evidence. We have no definite and firm conviction that a mistake was made as to the findings. The district court considered the documentary evidence, listened to the testimony, made credibility determinations, and then concluded that McReynolds violated the order “willfully, repeatedly, and over a lengthy period.” This supports the temporal extension under the statute. We observe that the lengthy restriction need not remain in place if McReynolds complies with the order for a much shorter period and demonstrates to the district court that the reasons for the extension no longer apply and they are unlikely to occur. *See* Minn. Stat. § 518B.01, subd. 11 (a) and (b) (authorizing and outlining basis for district court to modify or vacate an order for protection after an application and hearing). We will not disturb the district court’s decision as to the length of the extension.

We reach a different conclusion regarding the extension of the geographic area covered by the order for protection. When we apply the statute to the findings, we conclude that the district court’s extension of the radius around Courtney’s residence from which McReynolds is excluded—from a 100-foot radius to a one-mile radius—is excessive. The statute allows the district court to exclude McReynolds “from a reasonable area surrounding the dwelling or residence” of Courtney. Minn. Stat. § 518B.01, subd. 6(3). The modifier “reasonable” frames the district court’s discretion, implicitly requiring courts

to strike a rational balance between the competing interests at stake: the protected person's safety and the restricted person's liberty. We look to the district court's explanation in relation to its supported findings to examine whether its restriction is reasonable.

The district court imposed the extended restriction without discussing those competing interests or seeming to seek a balance between them. The new, one-mile radius results in a prohibited zone that jumped from only 200 feet in diameter to two miles in diameter and encompasses an area of more than three square miles. It extends from Courtney's home, which is located near the center of Minneapolis, in a manner that severely restricts McReynolds's ability to travel naturally through the city. For example, it inhibits McReynolds's potential travel on the major east-west thoroughfares of 28th Street, 31st Street, 36th Street, 38th Street, 42nd Street, and Lake Street. It inhibits his potential travel by similarly severing all the major north-south thoroughfares of Lyndale Avenue, Nicollet Avenue, Portland Avenue, Park Avenue, Chicago Avenue, Bloomington Avenue, and even Interstate 35W. Given the statute's contemplation of a "reasonable area surrounding the . . . residence," we cannot affirm when the district court did not explain this extraordinary expansion so far from the residence either in relation to the safety concern the expansion seeks to solve, or to the liberty concern it inadvertently creates.

We observe that, as onerous as this restriction stands already, it could become instantly even more onerous without any judicial involvement or any notice to anyone, including to McReynolds. This is because the order ensures that the two-mile restrictive bubble automatically follows Courtney to any new residence she moves to, and it adds that the "[o]rder for [p]rotection is enforceable even if [Courtney] does not notify the Domestic

Abuse Service Center or the appropriate law enforcement agency of [her] change in residence.” According to the express terms of the order, if, hypothetically, Courtney moves (even without notice) a few blocks north into a condominium in downtown Minneapolis, “a police officer must arrest and take [McReynolds] into custody” as soon as the officer encounters McReynolds while he is attending any event, say, at the Minneapolis Convention Center, or he is attending a Twins, Timberwolves, or Vikings game, or driving anywhere in or around downtown, the warehouse district, or the gateway district.

We emphasize that we do not base our decision on this or any other hypothetical circumstance. We are convinced that the nature and size of the restricted zone extends far beyond what is reasonable to solve the problem the district court said it was solving by expanding the zone. The district court expanded the zone stating its concern specifically that, under the extant order, McReynolds might “easily observe or stalk [Courtney] from slightly beyond [the 100-foot] radius.” Although the record supports the concern and the district court may modify the zone to prevent McReynolds from engaging in this sort of conduct, the district court’s order is not tailored to that objective and is disproportionately onerous on its face. Contrary to the dissent’s insistence that today’s decision rests on “many ‘what ifs’ down the major traffic arteries of the Twin Cities metro area,” the order’s two-mile bubble extends from Courtney’s home in a fashion that actually and certainly prevents McReynolds from traveling directly through Minneapolis using any of the listed major east-west and north-south roadways. This is plainly more restrictive than necessary to prevent him from observing or stalking Courtney in the area around her home. The

extended area of exclusion therefore is not “a reasonable area surrounding” Courtney’s home, and ordering it therefore exceeded the district court’s discretion under the statute.

Other than detailing the several ways in which McReynolds violated the previous order, the dissent, like the district court, does not attempt to explain how the expansive, two-mile bubble around Courtney’s residence is limited to preventing the offensive conduct without unnecessarily (and therefore unreasonably) also inhibiting McReynolds’s liberty. While the dissent observes accurately that the district court has discretion to define the scope of the restriction, that discretion is not boundless. The statute imposes the bounds, and it is our duty on review to determine whether the district court constrained itself within them. Despite our deference to the district court, we cannot agree with the dissent’s declaration that “the district court certainly did not misapply the law,” because the controlling law expressly authorizes the district court to exclude a person only “from a reasonable area surrounding the dwelling or residence” and the district court’s expanded zone limits McReynolds’s ability to travel in a manner that bears no express or discernable relationship to the concern that the zone is ostensibly intended to address. We are not persuaded otherwise by the dissent’s citation to two unpublished opinions, neither of which parallels the facts of this case, analyzes the statutory framing of the district court’s discretion, or carries any precedential authority.

We reverse only the portion of the district court’s order that extends the 100-foot radius of exclusion surrounding Courtney’s home to one mile. We remand with instructions for the district court to reduce the size of the restriction and to define the zone of exclusion

around Courtney's residence in a manner that both tracks the reasons supporting the extension and that does not unreasonably interfere with McReynolds's mobility.

Affirmed in part, reversed in part, and remanded.

WORKE, Judge (concurring in part, dissenting in part)

I concur with the majority's determination that the underlying facts of this case justify extending the existing OFP from one to 50 years. But I respectfully part company with the majority's determination that the underlying facts of this case do not likewise support an extension of the geographic provisions of the OFP from 100 feet to one mile. I would affirm the district court's order in its entirety.

There is no disagreement that there is considerable history of conflict between the parties. A review of this history of abuse is important in reviewing the reasonableness of the district court's fashioned relief. The district court is in the best position to judge the credibility of witnesses. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). When the initial OFP was issued, the district court found Courtney to be credible in establishing that domestic abuse as defined by Minn. Stat. § 518B.01, subd. 2(a) (2016) occurred between the parties. The district court did not find McReynolds's testimony to be credible with respect to any of the allegations.

At the time of the hearing to expand the geographic terms of the OFP, McReynolds had violated the district court's order on twelve occasions. This included threatening Courtney at their child's elementary school, which caused the school to obtain a no-trespass order against McReynolds. This also included so many alleged violations of the 100-foot restriction that Courtney felt the need to install a security camera on her property. This camera eventually captured McReynolds driving his SUV right next to Courtney's home. And all this excludes the innumerable text messages and emails sent to Courtney anonymously but using terminology and language only the parties would use with each

other—each one a violation of the OFP in and of itself. McReynolds’s threats, communications, and clear flaunting of the 100-foot restriction led the district court to appropriately conclude that “the 100-foot exclusion radius around [Courtney]’s home is too narrow,” and that McReynolds “could easily observe or stalk [Courtney] from slightly beyond this radius.” Facing an obstinate McReynolds who time-and-time again demonstrated his willingness to ignore the restriction of the 100-foot perimeter, the district court used its broad discretion to protect Courtney as best it could: by enlarging the perimeter.

A district court may extend an existing OFP upon a showing that: “(1) the respondent has *violated a prior or existing order for protection*; (2) the petitioner is *reasonably in fear of physical harm from the respondent*; [or] (3) *the respondent has engaged in the act of stalking* within the meaning of section 609.749, subdivision 2.” Minn. Stat. § 518B.01, subd. 6a(b) (2016) (emphasis added). While a district court does not need to find that a showing of all three was made, the district court here made such findings. Here, the district court found it very likely that McReynolds violated the original OFP willfully, repeatedly, and over a lengthy period of time. The district court found that McReynolds engaged in stalking behavior based on “credible” eyewitness testimony by Courtney and her mother. And the reasonable fear of harm is evident, the district court having “observed Ms. Courtney when she took the witness stand visibly shaking,” that Courtney “had a very dry mouth,” was “extremely nervous,” and “kept drinking from a cup.” The district court remarked that it knew these types of symptoms and observed that Courtney’s fingers were shaking as she testified. “She was very hesitant, didn’t want to

look at ... [McReynolds]. So I do believe that her fear is reasonable,” the district court concluded. It then found that the 100-foot radius around Courtney’s home was too narrow, noting that “[McReynolds] could easily observe or stalk [Courtney] from slightly beyond this radius,” leading it to conclude that widening the radius was appropriate.

The majority is worried that this one-mile restriction does not reasonably support the protection problem the district court was trying to solve. That is fine, so long as we are in a position to fashion relief. But we are not; we are a reviewing court. We do not craft remedies for situations that district courts are in a better position to solve. We review a district court’s findings for errors—errors that must be “clear,” if our caselaw is to be believed. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012).

To that end, the question for us is not what we would have done. The question is not even whether the district court’s decision is wrong. The question is whether the district court’s decision is so wrong that it shows that the district court *abused* its discretion. *See id.* In the context of domestic abuse, this court has stated that a district court abuses its discretion if its findings are not supported by record evidence or if it misapplies the law. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). In family law, generally, a district court also abuses its discretion if it resolves the discretionary question in a manner that is contrary to logic and the facts on record. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn. 1984).

Here, the district court certainly did not misapply the law, I cannot see any place where it relied on findings unsupported by the evidence, and it is not at all clear that the district court resolved the question of the radius of the exclusion zone in a manner contrary

to logic and the facts on this record. Specifically, the district court found that McReynolds threatened Courtney with violence, breached the 100-foot restriction once and likely many other times, and was the likely sender of numerous unsolicited communications. Add in the fact that McReynolds's arguments for lessening the distance restriction are paper-thin¹ and that we have recently upheld one-mile restrictions in similar cases (including a case where a respondent was effectively excluded from an entire town),² and I am convinced that I cannot join my colleagues in determining that the district court abused its discretion.

The majority certainly provides good reasons why the one-mile radius might be a hardship for McReynolds, and presents many "what ifs" down the major traffic arteries of the Twin Cities metro area. But again, the question before us is not what we would have done had we been the district court. It is whether the district court abused its discretion by misapplying the law or relying on facts not supported in the record (or, possibly, resolving

¹ In fact, when the district court announced the one-mile restriction, McReynolds's trial attorney pushed back by claiming that McReynolds would no longer be able to visit his parents. However, Courtney replied that this was not true since his parents live "over north," which McReynolds seemed to concede. McReynolds then protested that he has "friends and stuff in the area."

² See *Pascavage v. MacKay*, No. A15-1204, 2016 WL 854755, at *3 (Minn. App. Mar. 7, 2016) (concluding that a district court did not abuse its discretion even when the appellant argued that the distance restriction denied him access to the entire city of North Branch); see also *Davies v. Mehrlian*, A14-0599, 2015 WL 404560, at *4 (Minn. App. Feb. 2, 2015) ("The one-mile restriction is reasonably tailored to afford respondent a zone of safety and security. Under the circumstances and in consideration of the record evidence of appellant's extensive harassment of respondent, the one-mile restriction is reasonable."). While I understand that unpublished opinions are of persuasive value "[a]t best," I use them in this context to persuasively show that we have upheld similar restrictions without resistance in the past. See *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

the question in a manner contrary to logic and the facts on this record). In my opinion, the district court's factual findings showing McReynolds's *intentional* violation of court orders, the determination that he is not truthful with the court, and the finding that he could stalk and harass absent an extension beyond the present radius were all reasonable justifications for widening the distance. Whether an OFP should last five years or 50, or whether it should reach 10 feet or 1 mile, the district court is in a far better position to make these determinations. And while our role is certainly not to be a rubberstamp for district courts, we should defer to its determinations so long as there are no clear errors. Seeing none, I respectfully dissent.