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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1063**

In the Matter of Larissa Michele Hansen
on behalf of Minor Child, petitioner,
Respondent,

vs.

Timothy Charles Richter,
Appellant.

**Filed January 16, 2018
Reversed and remanded
Peterson, Judge**

Isanti County District Court
File No. 30-FA-17-102

Larissa Michele Hansen, Isanti, Minnesota (pro se respondent)

Kaitlyn J. Andren, Brown Law Offices, P.A., Champlin, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order for protection (OFP), appellant father argues that, because the evidence did not support the district court's finding that he agreed to the OFP and understood that the OFP would be enforced as if he admitted to domestic abuse, the district court abused its discretion by issuing the OFP. We reverse and remand.

FACTS

Appellant-father Timothy Charles Richter was married to respondent-mother Larissa Michele Hansen from August 2011 to December 2014. The parties have one child, R.J.H.R., who was born in May 2011. Their Hennepin County divorce decree granted them joint legal and physical custody of R.J.H.R., with equal parenting time. At the time of the dissolution, father was serving in the Marine Reserves.

In March 2017, mother filed a motion in Hennepin County District Court requesting that father be found in contempt of court. The motion alleged that father had picked up R.J.H.R. from school during mother's parenting time, failed to allow reasonable telephone contact between mother and R.J.H.R., and failed to pay for three days of child-care expenses. A hearing on an order to show cause was set for April 20, 2017.

On April 4, 2017, mother petitioned for an OFP in Isanti County District Court. She alleged that father "[t]hreatened me via text message degrading me by saying that I'm mentally unstable, an unfit mother, a troll. Telling me to save up for legal costs. Saying that I should know what happens if I 'disrespect' him. Calling me an incompetent human being." Mother alleged:

In the past I've called several times for him choking me, having a loaded gun in his back pocket walking around the house, leaving our daughter at home by herself to follow me when we were separated, catching him being a peeping tom at the apartment I lived at. Throwing me out of a vehicle and leaving me on the side of the road.

. . . .

He enjoys making others fear him. He belittles others by verbal assaults or physically chokes others to comply with

his demands. His unpredictable behavior is used as a fear tactic as well as verbally threatening to kill me if I didn't comply. He has punched the dog in the face for tipping his beer.

In asking for temporary custody of R.J.H.R. in the OFP petition, mother stated: "He uses her as a [pawn] in his games to manipulate, verbally abuse and degrad[e] me, and I'm worried he will hurt her to get to me." The petition asked that father have no parenting time "[u]ntil our court date April 20th 2017 for her safety."

In response to mother's petition, the Isanti County District Court issued an ex parte OFP, and the parties appeared for a hearing in Isanti County on April 17, 2017. Mother was represented by counsel at the hearing; father appeared pro se. Both parties brought witnesses to the hearing. At the start of the hearing, the following discussion took place between the district court judge and father:

Q: Well, Mr. Richter, before we proceed forward one thing I always tell people who are in your position, that is the respondent, is that you have an opportunity to have the Court issue an order without making a finding of domestic abuse. That is available to you now and only now. If you say, no, I want my full hearing, then we will give it to you, and, of course, the petitioner has the burden of proving by a fair preponderance more likely than not, it's not a criminal case, which is beyond a reasonable doubt, but more likely than not that the allegations are true and that the Court should issue an order; okay?

A: Okay.

Q: Now, understanding that would you like to proceed forward with that opportunity to allow the Court to issue an order without making a finding of domestic abuse?

A: How does that process work, Your Honor?

Q: You just say, well, Judge, I agree that the Court may issue an order. Now, what the order will look like, I haven't even looked at and so we would have some discussion with [mother's counsel] about that, the length of time and the extent of that order, but that's what would happen here, okay, so there would be an actual order, Order for Protection order, and not to mislead you once it's issued, whether there was a finding of domestic abuse or not, if there's a violation of it it still carries the same penalty of a misdemeanor.

A: That's quite all right, Your Honor.

Q: Okay. So would you like to follow that process and we look at what an order will look like and accept the fact that the Court can issue an order without making a finding of domestic abuse?

A: Yes, Your Honor, that's fine with me.

Later in the hearing, mother's attorney requested a two-year OFP and suggested that any OFP issued in Isanti County should be subject to amendment in Hennepin County District Court "to determine access or exchanges or communication regarding the child." The district court asked father whether such a provision is something that he would be in favor of right now, and father answered, "Well, like [mother's counsel] said we have court in three days so her filing this was a little out of nowhere, we've been coparenting for three years. I would be absolutely fine with that. I think the findings are going to be favorable." Later, the district court said, "So we're going to order the no contact at this time subject to" an e-mail or texting exception during emergencies involving the child. The district court informed the parties that this part of the order could not be amended in "Hennepin County Family Court" but that the parties could agree to amend it "somewhere down the road." Father responded, "Uh-huh." At the end of the hearing, when the district court

summed up the terms of the OFP, father asked, “Is that in relation to my daughter? That’s just going until the 20th, the 20th is where we’ll hear about that?” The district court responded, “Well, this will be - - This order is going to be in place, it’s encompassing both, but it may be amended by the Hennepin County Family Court so any orders you get out of Hennepin County will be affecting this order regarding [R.J.H.R.]”

On April 17, 2017, the district court issued a two-year OFP that included the following finding: “[Father] does not object to an Order for Protection and understands that the order will be enforced as if there was an admission or finding of domestic abuse.” This finding was printed on the form used by the district court, and the district court checked the box beside the finding to indicate that the finding was included in the order. Temporary legal and physical custody of R.J.H.R. was transferred to mother, subject to “[a]ny changes made in the Hennepin County file.” Although the district court did not check another box on the form to include a finding that father “poses an imminent risk of causing another person substantial bodily harm,” the OFP includes a firearms restriction ordering that father is “not to ship, transport, possess, or receive any firearm or ammunition for the duration of this Order.” Father alleges in his appellate brief that he served in the Marine Corps for 16 years, and because of the OFP’s firearms restriction, he could not continue to serve.

Following the April 20, 2017 hearing in Hennepin County District Court on the order to show cause, the district court acknowledged the existence of the OFP issued by the Isanti County District Court, but noted that there had been no allegation of domestic abuse involving the child, and temporarily revised the parenting-time arrangement so that father had parenting time every other weekend. By separate order dated May 19, 2017, the

Hennepin County District Court required mother to request an amendment of the OFP to allow father to have parenting time with R.J.H.R. every other weekend, allow the parties to have contact when their counsel were present for ADR proceedings, and allow father to have telephone contact with mother to “facilitate conversation with or about the parties’ joint minor child.” An amended OFP incorporating these modifications was filed by the Isanti County District Court on May 23, 2017.

Father filed a notice of appeal on June 15, 2017, to challenge the April 17, 2017 OFP. Father argues that the district court abused its discretion by issuing the OFP because the evidence does not support the finding that he agreed to the OFP and understood that it would be enforced as if he had admitted to domestic abuse and because the district court did not hold an evidentiary hearing. A week after the appeal was filed, the Hennepin County District Court issued an amended order that ordered father to pay mother \$102 for child-care expenses but denied mother’s contempt motion, noting that “both parties contributed to a variety of miscommunications and breakdowns in co-parenting.” The district court also denied mother’s motion to modify custody and reinstated the parenting-time schedule that gave each party parenting time with the child in one-week intervals.

D E C I S I O N

An appellate court reviews a district court’s decision to issue an OFP for abuse of discretion. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). “A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). Findings are reviewed for “clear error,” which, to support reversal, means that they must

be “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Ekman*, 812 N.W.2d at 895 (quotation omitted). This court will “neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted).

Mother sought an OFP under the Domestic Abuse Act, Minn. Stat. § 518B.01 (2016). The act created “an action known as a petition for an order for protection in cases of domestic abuse.” *Id.* at subd. 4. “Domestic abuse” includes “the infliction of fear of imminent physical harm, bodily injury, or assault.” *Id.*, subd. 2(a), (2). When domestic abuse has occurred, the act permits issuance of an OFP involving a former spouse or person who has resided with the petitioner in the past. *Id.* at subds. 2(b)(1), (4), 4(a). Following a hearing on the petition, the district court may grant broad relief, including firearms restrictions, if the petition is proved by a preponderance of the evidence. *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015); Minn. Stat. § 518B.01, subds. 5-6.

Father argues that “[t]he district court abused its discretion by issuing the [OFP] . . . because the record does not support the court’s findings that [he] agreed to the terms of the [OFP] or that [he] understood that the order would be enforced as if there was an admission or finding of domestic abuse.” A stipulation typically requires a meeting of minds on the essential elements in order to be valid. *Angier v. Angier*, 415 N.W.2d 53, 56 (Minn. App. 1987). A “waiver is the intentional relinquishment of a known right.” *Frandsen v. Ford Motor Co.*, 801 N.W.2d 177, 182 (Minn. 2011). To be valid, a waiver “requires two

elements: (1) knowledge of the right, and (2) an intent to waive the right.” *Id.* The party asserting waiver must prove these elements. *Id.*

Father argues that the evidence presented at the hearing was not sufficient to support the district court’s finding that he did not object to an OFP and understood that the OFP would be enforced as if there was an admission of domestic abuse or that he waived an evidentiary hearing. As to the admission, the district court described an “opportunity” that would be available to father “now and only now” “to have the Court issue an order without making a finding of domestic abuse.” This “opportunity” seemed advantageous to father as presented, but its effects were to treat father as if he had admitted the grounds for issuing the order and to curtail father’s right to a hearing. When father asked the district court “how the process works,” the district court explained the OFP standard of proof and compared it to the criminal standard of proof, stated that there would be an actual order issued, and said that “whether there was a finding of domestic abuse or not, if there’s a violation of it it still carries the same penalty of a misdemeanor.” This confusing explanation mixed together multiple legal principles and information about the effect of the admission. Father was next asked whether he would “accept the fact that” the district court could “issue an order without a finding of domestic abuse,” and “look at what an order will look like,” and father said, “Yes, Your Honor, that’s fine with me.”

Even if we were to construe father’s initial statements as an agreement that the court may issue an OFP without making a finding of domestic abuse, his later statements show that he did not understand the effect of the agreement. Father’s statement that the OFP was “just going until the 20th,” the date of the upcoming hearing in Hennepin County, shows

that he did not understand that the OFP would be in effect for two years, instead of for the three days until the hearing in Hennepin County.

Because the district court's statements were confusing, and father did not understand the nature and effect of the agreement or that he was waiving his right to a hearing on whether there was domestic abuse, we conclude that the finding that "[father] does not object to an Order for Protection and understands that the order will be enforced as if there was an admission or finding of domestic abuse" is not supported by the weight of evidence. We therefore reverse the OFP and remand for the district court to permit a hearing on the petition and, if the petition is proved by a preponderance of the evidence, to provide relief.

Finally, we note that the OFP contains an inconsistency regarding the firearms restriction. The district court imposed the firearms restriction but did not find that father "poses an imminent risk of causing another person substantial bodily harm" to support taking immediate possession of his firearms under Minn. Stat. § 518B.01, subd. 6(i). The OFP statute requires that "[w]hen a court issues an order containing a firearms restriction . . . , the court shall determine by a preponderance of evidence if an abusing party poses an imminent risk of causing another person substantial bodily harm." Minn. Stat. § 518B.01, subd. 6(i).

Reversed and remanded.