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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0077**

In re the Matter of:
Ayano Eto Baylor for self and o/b/o Minor,
petitioner,
Respondent,

vs.

Christopher Gary Baylor,
Appellant

**Filed May 14, 2018
Affirmed; motion denied
Worke, Judge**

Hennepin County District Court
File Nos. 27-DA-FA-17-6539, 62-DA-FA-17-1492

Joel D. Van Nurden, Minneapolis, Minnesota (for respondent)

Christopher Gary Baylor, Yeadon, Pennsylvania (pro se appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and
Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by granting an order for protection (OFP) on behalf of respondent and their child and by wrongfully excluding evidence. We affirm.

FACTS

Appellant-husband Christopher Gary Baylor and respondent-wife Ayano Eto Baylor are the parents of A.B., who was born in August 2015. In October 2017, wife petitioned for an OFP on behalf of herself and A.B. The district court issued an ex parte OFP and scheduled an evidentiary hearing. Wife testified that in May 2017, she was sitting on the floor of her living room with A.B. sitting on her knee. She testified that husband came into the room and kicked her in the back when she was holding A.B. and that A.B. was shocked by the kick and started to cry. Wife also testified that on another occasion husband told A.B. to stop crying and “showed [her] a spatula.” When A.B. did not stop crying, husband “hit her diaper with the spatula.” Wife testified that husband struck A.B. with a spatula once every other month.

Husband testified that his relationship with wife was “heated,” meaning “[t]here’s always a lot of arguing and disagreements.” Husband’s attorney asked husband whether he kicked wife in May 2017, to which husband replied, “No. I’ve never abusively kicked my wife.” In response to a question asking if he recalled kicking wife at all in May 2017, husband replied, “No, just for fun.” He testified that if anything occurred, “it was probably . . . just playing around.” Husband also denied striking A.B. with a spatula. He admitted that he has “put [his] hands on [his] daughter when [he] disciplined her,” and explained that A.B. “likes to hit [him] in the face or the body, so [he]’ll swat her hand.”

Husband attempted to introduce evidence of a video depicting “[wife] hitting [him] on the arm, striking [him] on the arm multiple times.” The actions depicted in the video

occurred in September 2017. Wife objected to the video as irrelevant, and the district court sustained the objection.

The district court granted wife's petition and ordered the OFP effective for two years from the date of the ex parte OFP, or until October 5, 2019. Husband appealed.

D E C I S I O N

OFP

Husband argues that the district court abused its discretion by granting an OFP with respect to wife and A.B. “We review the 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). “A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quotation omitted). We review the district court’s findings for clear error. *Ekman*, 812 N.W.2d at 895. A district court’s findings are clearly erroneous if they are “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Id.* (quotation omitted). We review the record in an OFP proceeding “in the light most favorable to the district court’s findings, and we will reverse . . . only if we are left with the definite and firm conviction that a mistake has been made.” *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006) (quotation omitted). We defer to the district court’s credibility determinations and do not reconcile conflicting evidence. *Pechovnik*, 765 N.W.2d at 99.

The district court may issue an OFP upon a finding of domestic abuse. Minn. Stat. § 518B.01, subd. 4 (2016). “Domestic abuse” includes, “if committed against a family or

household member by a family or household member,” “physical harm, bodily injury, or assault[,]” as well as “the infliction of fear of imminent physical harm, bodily injury, or assault.” *Id.*, subd. 2(a)(1)-(2) (2016). The OFP statute “does not require that the physical harm, bodily injury, or assault has occurred within a specified time before the petition is filed or be imminent.” *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 499 (Minn. 2018) (quotation marks omitted). Once a district court determines that “domestic abuse” has been established, it may “examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP.” *Id.* at 500.

Husband argues that there was insufficient evidence to show that any physical harm, bodily injury, or assault occurred with respect to wife and that wife failed to demonstrate any intent to do harm. We disagree. First, wife testified that husband kicked her in the back, and that the force of the kick bent her over. Although husband testified that he did not “abusively” kick wife, the district court found wife’s testimony to be credible and husband’s testimony “less credible with respect to [wife]’s allegations of domestic abuse.”

Second, this court has stated that, “to 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). In *Thompson*, however, the supreme court recently clarified that, upon a showing that physical harm, bodily injury, or assault has occurred, “the district court has the discretion, based on all of the relevant circumstances, to grant or deny a petition for an [OFP].” 906 N.W.2d at 496. Here, wife testified that, over the course of the marriage, the seriousness of husband’s domestic abuse had increased and that she believed domestic violence would

continue without an OFP. Because the district court's finding of domestic abuse was not clearly erroneous and the relevant circumstances, viewed in the light most favorable to the district court's findings, support the district court's finding of a likelihood of continued domestic abuse, the district court did not abuse its discretion by issuing the OFP with respect to wife.

Husband also argues that the district court abused its discretion by issuing the OFP with respect to A.B. We are not persuaded. Wife testified that husband kicked her while she was holding A.B. and that the force of the kick bent her over and shocked A.B., causing A.B. to cry. Wife also testified that husband repeatedly struck A.B. with a spatula. Although husband denied striking A.B. with a spatula, we defer to the district court's determination that husband's testimony was less credible than wife's. *See Pechovnik*, 765 N.W.2d at 99 (stating that this court defers to the district court's credibility determinations). We conclude that the district court did not abuse its discretion by issuing the OFP with respect to A.B.

Evidence

Husband argues that the district court incorrectly excluded a video depicting wife striking his arm. "The Minnesota Rules of Evidence apply to domestic abuse hearings." *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017). Whether to admit evidence lies within the discretion of the district court and "its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Id.* (quotation omitted). The appellant is entitled to a new hearing based on an erroneous evidentiary ruling if he demonstrates prejudicial error. *Id.*

The district court excluded the video as irrelevant. Evidence is relevant if it has “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.” Minn. R. Evid. 401. Irrelevant evidence is inadmissible. Minn. R. Evid. 402. Here, husband sought to introduce a video depicting an incident in September 2017, months after the alleged domestic abuse against wife, in which wife allegedly struck his arm in a manner that did not hurt him “that much.” The video, as described by husband, would not make it any more or less probable that husband committed domestic abuse against wife in May 2017 or against A.B. in October 2016. Therefore, we conclude that this evidence was irrelevant and inadmissible. The district court did not abuse its discretion by excluding the video.

Other issues

Husband raises several other arguments. First, he asserts that when he and wife resided in other states, no domestic abuse occurred in those states under their respective laws. This argument is not relevant to the issues before this court.

Second, he argues that the district court erred in its interpretation of the statutory definition of “domestic abuse.” Husband cites Minn. Stat. § 626.556, subd. 2(k) (2016), which defines “physical abuse” under the reporting-of-maltreatment-of-minors statute, and states that “[a]buse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in injury.” But husband cites no authority that courts should, in the context of an OFP, apply a definition of

“physical abuse” from a statute relating to reporting the maltreatment of minors over the definition of “domestic abuse” in the OFP statute.

Third, husband argues that the district court lacked personal jurisdiction to issue an OFP against him. Husband did not raise this argument to the district court. This court generally does not consider issues which were not raised to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). While a defense based on lack of subject-matter jurisdiction may be raised at any time, a defense of lack of personal jurisdiction is forfeited if a party either fails to raise it in a motion to consolidate defenses or in a motion or responsive pleading. Minn. R. Civ. P. 12.08. Admittedly, this court may consider issues not raised to the district court “as the interest of justice may require.” Minn. R. Civ. App. P. 103.04. However, because husband offers no reason why this court should consider this issue for the first time on appeal, we conclude that husband has forfeited this argument.¹

Affirmed.

¹ On April 29, 2018, husband filed a “Motion for Emergency Relief . . . FOR PREVENTION OF CHILD ABDUCTION.” While not entirely clear, husband may be seeking relief in the nature of an injunction or a modification of custody. It appears that the questions of injunctive relief and modification of custody based on husband’s current allegations have not been previously presented to the district court. Therefore, those questions are not properly before this court. See *Thiele*, 425 N.W.2d at 582. Husband’s motion filed April 29, 2018, is denied.