

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1313**

In re the Matter of: Sara Ann Zahasky, petitioner,
Respondent,

vs.

Thomas Warren Johnson,
Appellant.

**Filed May 28, 2019
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-DA-FA-18-2978

Sara Ann Zahasky, Plymouth, Minnesota (pro se respondent)

Kelly M. McSweeney, Jensen, Mullen, McSweeney & Meyer, PLLP, Bloomington,
Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Hooten, Judge; and Reyes,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this appeal from a district court's grant of an order for protection (OFP), appellant argues that the district court abused its discretion because the record lacks sufficient evidence to support the OFP and the district court misapplied the law. We affirm.

FACTS

Appellant Thomas Warren Johnson (husband) and respondent Sara Ann Zahasky (wife) divorced in 2010. The parties have two minor children together, W.J. and R.J. Wife obtained two previous OFPs against husband in 2002¹ and in 2010.

Wife petitioned for the OFP at issue in this appeal on May 4, 2018. She requested a 50-year OFP, alleging that husband has engaged in threatening behavior, including following her in his car, watching her, opening online accounts using her information, and sending packages to her home. She stated that she is afraid husband will physically harm her. She also requested an OFP on behalf of the children, alleging that husband has physically abused W.J. Husband disputes the allegations of abuse and denies that he has engaged in any of the behavior that wife has alleged.

The district court granted an emergency ex parte OFP on May 7, 2018. The district court then held an evidentiary hearing in June 2018, during which it heard testimony from a number of witnesses, including husband and wife. The district court declined to grant the OFP on behalf of the children, finding that the physical harm of W.J. was an isolated incident and that R.J. had no reason to fear physical harm from husband. However, it granted a two-year OFP on behalf of wife under Minn. Stat. § 518B.01, subd. 6a(b), based

¹ The custody evaluation completed prior to the parties' marriage dissolution indicates that the first OFP was granted in 2003, but husband's brief, the district court order, and wife's testimony indicate that it was in 2002. The parties dispute whether the 2002 OFP was dismissed after the parties reconciled.

on husband's current behavior, the past domestic abuse that has occurred between the parties, and husband's violation of the 2002 OFP. This appeal follows.²

DECISION

Husband argues that the district court abused its discretion because it misapplied the law and because the OFP is unsupported by the evidence. We are not persuaded.

We review the district court's grant of an OFP for an abuse of discretion. *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). A district court abuses its discretion if it bases its decision on an erroneous view of the law or against logic and the facts on record. *Id.* We view the record in the light most favorable to the district court's findings and will not reverse unless we are left with the "definite and firm conviction that a mistake has been made." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). We will reverse an OFP issued under Minn. Stat. § 518B.01 if it is not supported by sufficient evidence. *Bjergum v. Bjergum*, 392 N.W.2d 604, 606-07 (Minn. App. 1986). But we will not make credibility determinations or reconcile conflicting evidence. *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017).

Under the Domestic Abuse Act, in considering physical abuse for purposes of granting an OFP, it is irrelevant how long ago the physical abuse occurred. *Thompson*, 906 N.W.2d at 500. Once domestic abuse has been established, the district court may examine all relevant circumstances in exercising its discretion to grant an OFP. *Id.* If a previous OFP is no longer in effect, a district court may grant a new OFP upon a showing that (1) the

² Wife, pro se, did not file a brief. This court ordered that the appeal proceed under Minn. R. Civ. App. P. 142.03.

respondent violated a prior OFP; (2) the petitioner is reasonably in fear of physical harm from the respondent; (3) the respondent has engaged in stalking as defined in section 609.749, subd. 2; or (4) the respondent has been incarcerated and is about to be released or was recently released. Minn. Stat. § 518B.01, subd. 6a(b)(1)-(4) (2018). A petitioner need not show that physical harm is imminent to obtain a subsequent OFP. *Id.* at 6a(b); *see also Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012) (petitioner need not show actual physical harm or even imminent harm to extend OFP).

The statute only requires that one of the four factors be met in order to grant a subsequent OFP. Here, the district court found the presence of two factors. It found that wife reasonably feared physical harm from husband based on husband's two prior convictions that involved domestic assault against wife. It stated that wife testified regarding prior acts of domestic abuse and that "she credibly testified that [husband] has behaved in a threatening manner toward her and that such behavior has escalated recently." The district court further found that wife testified credibly that husband violated the 2002 OFP³ by sending wife a threatening email.

We find support in the record for the district court's findings. Wife described the events leading to the 2002 OFP, stating that husband had threatened violence against her, screamed at her, and had hit her on multiple occasions. She asserted that, at the time she obtained the 2002 OFP, he became progressively more violent by slamming her onto a

³ While the prior OFPs are not part of the record, husband does not dispute their existence. Husband does dispute the underlying facts supporting the 2002 OFP and that he violated it.

cement floor, causing her back to be sore, and leaving fingerprint marks on her arms. She testified that husband violated the 2002 OFP by sending her a threatening email. With respect to the 2010 OFP, she stated that he was violent, threw objects at her, spit at her, tried to break down a door after she locked him out, and threatened to kill her.

Wife then testified regarding her present petition for an OFP. She stated that husband sometimes follows her to work or that she has seen him waiting for her on her route to work. On multiple occasions, she felt like he was watching her through the windows in her office at work because he would send her text messages as soon as she arrived in her office. She described his text messages as “threats” or as consisting of “[w]hatever recent thing he was trying to yell at [her] about.” Moreover, a police officer testified regarding incidents in which wife and her current husband’s information, including her social security number, their birthdays, and address, were used to create online accounts. He testified that the IP addresses used to create these accounts were associated with the company at which husband’s current wife works. The officer also testified that wife had received unusual packages in the mail. Wife testified that she believes husband to be responsible for these instances.

Wife established prior physical abuse by husband. Husband argues that this information should not be used in granting an OFP because it occurred in 2002 and 2010. But a district court acts within its discretion by considering this past abuse. *Thompson*, 906 N.W.2d at 500. In *Braend v. Braend*, this court concluded that when a petitioner has obtained prior OFPs against her husband based on physical abuse, the husband’s repeated phone calls, considered in light of the circumstances leading to the prior OFPs, are

sufficient to support a finding that the petitioner reasonably feared physical harm. 721 N.W.2d 924, 927 (Minn. App. 2006).

The circumstances are similar here. Following wife, sending threatening text messages, and opening fraudulent accounts using wife's information, taken in consideration with the past history of abuse, support a finding that wife reasonably feared physical harm by husband, satisfying Minn. Stat. § 518B.01, subd. 6a(b)(2). Further, wife also testified that husband violated the 2002 OFP, satisfying Minn. Stat. § 518B.01, subd. 6a(b)(1).

Husband disputes wife's allegations and argues that the evidence "is replete with incidents showing [wife] has been less than trustworthy in the past." He points to testimony of the custody evaluator from the parties' dissolution in 2010, which found wife's allegations of abuse against husband to be not credible. He further alleges that there is no evidence to support the district court's finding that husband physically abused wife in the past and that his threatening behaviors have increased recently. But wife's testimony supports this finding, and the district court credited her testimony. It is not this court's role to make credibility determinations or reconcile conflicting evidence. *Aljubailah*, 903 N.W.2d at 643. Therefore, we conclude that the district court did not abuse its discretion.

Affirmed.