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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1373**

In the Matter of:
Naomi Rae Marx, petitioner,
Respondent,

vs.

Matthew Douglas McArthur,
Appellant.

**Filed May 13, 2019
Affirmed
Bratvold, Judge**

Ramsey County District Court
File No. 62-DA-FA-18-749

Brittney M. Miller, Susan C. Rhode, Moss & Barnett, Minneapolis, Minnesota (for respondent)

Seamus R. Mahoney, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Bratvold, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

On appeal from the district court's grant of an order for protection (OFP) against appellant, appellant argues that the evidence was insufficient to support the district court's factual findings, and the district court should have recognized that he had a right to use

reasonable force to protect his personal property. Because the district court's findings are supported by the record and establish that domestic abuse occurred and because existing law does not recognize a reasonable-force defense to an OFP petition, we affirm.

FACTS

Appellant Matthew Douglas McArthur and respondent Naomi Rae Marx began a romantic relationship on February 14, 2017. On June 8, 2018, McArthur and Marx were at his home when they had a disagreement over a text message that Marx received. McArthur asked to see Marx's cell phone to look at the message, and she refused. Marx then went into McArthur's bedroom to get his cell phone. McArthur followed her, grabbed the phone from Marx's hand, and they both went back to the living room. Both parties ended up on the floor in the living room; McArthur held Marx down with "both his hands" and she "struggled to get up for about 10 to 15 minutes." Marx was "crying and screaming" and asking McArthur "to get off." Eventually, McArthur let Marx up, and she left.

The same day, Marx received medical care for injuries from the assault. She testified that she had bruises on her back and both shoulders, along with an "open wound" on her shoulder. The attending doctor at the urgent care advised Marx to go to the emergency room, which she did. While being treated at the emergency room, Marx stated that she got in a fight with her boyfriend over a text message, he held her down on the floor by her arms, and she fought to get him off of her. Marx described her boyfriend as "three times" her size. The emergency-room summary stated that Marx said she was "fearful" to press charges because it would "enrage" McArthur and he "now owns a gun." Marx's

emergency-room records include photographs of bruises and red marks on Marx's back, arms, and shoulders. Marx reported the incident to the St. Paul Police Department.

On June 12, 2018, Marx filed an affidavit and petition for an OFP. In her submission, Marx attested that McArthur's "abusive behavior has been going on throughout the relationship," and had recently "gotten worse." She also averred that McArthur "wrestled" her to the ground and held her "down while [she] struggled to get up" after a dispute over a cell phone. The district court issued an ex parte OFP, which was served on McArthur. McArthur requested a hearing on the petition, and the district court conducted an evidentiary hearing, during which it admitted Marx's medical records, including pictures of her injuries, the police report, a criminal complaint charging McArthur with two counts of misdemeanor domestic assault, and text messages between McArthur and Marx.

During the evidentiary hearing, Marx testified to the facts summarized above and also testified that, while she and McArthur were on vacation in March 2018, he "put his entire body weight" on her and "suffocate[d]" her until she cried. Marx also testified that she feared for her safety. McArthur's brother, A.M., testified about the March 2018 incident and stated that McArthur did not physically abuse Marx. A.M. also testified that he had never seen McArthur abuse Marx.

McArthur testified that he and Marx had relationship problems because of her jealousy, and they had visited a counselor because of these problems. McArthur admitted holding Marx down on the floor on June 8, but testified that he did so only to get his cell phone. McArthur testified that, after he got his phone, he asked Marx to leave. McArthur

also agreed that he is about “[t]wo hundred and twenty pounds” and is much “bigger” than Marx; Marx weighs about one hundred pounds less than McArthur does.

The district court issued an OFP, which included these factual findings: McArthur and Marx were in a “[s]ignificant romantic or sexual relationship” at the time of the incident, McArthur admitted that he “held down” Marx on June 8, Marx “sustained injuries consistent with being held down,” and Marx “credibly testified that she experienced fear of imminent physical harm as a result from being held down by” McArthur.¹

McArthur filed a motion for review of the recommended findings and order, under Minn. R. Gen. Prac. 611. McArthur argued that he lacked the intent “to do present harm,” and that he “was acting only to restrain” Marx from taking his property. McArthur asked that the OFP be dismissed. The district court denied McArthur’s motion, reasoning that McArthur had incorrectly sought review of the OFP under rule 611, which only applies in housing court. McArthur appeals.

D E C I S I O N

I. The district court did not abuse its discretion in granting the OFP against McArthur.

This court reviews a district court’s issuance of an OFP for an abuse of discretion. *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). An abuse of discretion occurs when the district court’s “decision is based on an erroneous view of the law or is against logic and facts on the record.” *Id.* This court reviews the record in the light most

¹ The order for protection was signed by the referee who conducted the hearing on July 20, and later confirmed by the district court on July 26.

favorable to the district court's findings, and reversal is warranted only when this court is 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 review the district court's factual findings for clear error. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). And we do not reconcile conflicting evidence or decide issues of witness credibility. *Pechovnik*, 765 N.W.2d at 99.

A district court may issue an OFP if the petitioner demonstrates that "domestic abuse" occurred. Minn. Stat. § 518B.01, subd. 4 (2018). Domestic abuse means, in relevant part, (1) "physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats" or other specified offenses, if committed against a family or household member. *Id.*, subd. 2(a) (2018). 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*, 906 N.W.2d at 499 (quotations omitted). Once a district court determines that domestic abuse has occurred, it may "examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP." *Id.* at 500.

On appeal, McArthur appears to contest the district court's determination that Marx established domestic abuse by a family or household member because he did not live with Marx. McArthur acknowledges that he did not raise this issue to the district court. To the contrary, at the hearing, McArthur removed any issue about the relationship element when his attorney stipulated "that this was an intimate relationship and would qualify as a family relationship." Generally, we do not consider issues that were not raised to and considered

by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). The statutory definition of “[f]amily or household member” includes someone with whom the defendant has a “significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd. 2(b)(7) (2018). Although the term “significant” is not defined, the statute directs district courts to “consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination” to determine whether the statutory relationship exists. *Id.*, subd. 2(b).

In addition to McArthur’s stipulation of an intimate relationship, the record establishes that McArthur and Marx were in a romantic relationship for a year and a half, considered one another boyfriend and girlfriend, stayed over at each other’s houses, went on vacation together, and attended therapy to improve their relationship. This evidence supports a finding that Marx and McArthur were in a significant romantic relationship. *See, e.g., State v. Robinson*, 921 N.W.2d 755, 761-62 (Minn. 2019) (concluding parties were in a significant romantic or sexual relationship, even though they were only together for about one month, based on the “consequences of the relationship to the parties”). Because McArthur did not raise the issue in district court, stipulated to an intimate relationship with Marx, and the record supports the district court’s finding of a “significant romantic or sexual relationship,” we conclude that the district court did not clearly err on the relationship element.

Next, McArthur argues that he did not intend to harm Marx physically and Marx was also involved in “the struggle,” therefore, the district court abused its discretion in granting the OFP. This court has previously held 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) (emphasis added) (quotation omitted). In *Thompson*, the supreme court held 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 order for protection.” 906 N.W.2d at 496. In other words, a district court must find either physical harm *or* intent to do physical harm, but it need not find both before issuing an OFP. Here, the record supports the district court’s finding that Marx was physically harmed and suffered bodily injury after McArthur held her down on June 8. Because the district court found that McArthur physically harmed Marx, it acted well within its discretion in granting an OFP. No finding of McArthur’s intent was required.

Finally, McArthur argues that the record does not establish that Marx was “fearful for her life or [had an] imminent fear of physical harm.” We disagree with McArthur’s description of the record. Marx testified that McArthur had been previously abusive during their vacation, that she was afraid during the June 8 assault, and that she feared McArthur because he owned a gun. Also, the district court found that Marx “credibly testified that she experienced fear of imminent physical harm.” We defer to a district court’s credibility findings. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Because the record supports the district court’s factual finding that Marx feared physical harm from McArthur on June 8, and because we defer to the district court’s decision to credit Marx’s testimony

over McArthur's testimony, we conclude that the district court's finding that Marx was fearful of McArthur was not clearly erroneous.²

In sum, the district court's findings of fact are fully supported by the record.

II. The district court did not err by rejecting McArthur's affirmative defense that he was protecting his property.

McArthur testified that he held Marx down to get his cell phone back. Also, McArthur's attorney argued at the evidentiary hearing that no OFP should be issued because McArthur had a right to possess his personal property. On appeal, McArthur argues that he "only used reasonable force that was necessary to retrieve his phone," and he was entitled to use force to defend his property, therefore, the district court erred in issuing the OFP.

We reject McArthur's argument for three reasons. First, he cites no pertinent legal authority. The only case McArthur cites is *State v. Johnson*, 152 N.W.2d 529, 532 (Minn. 1967), which discusses self-defense to a murder charge, not defense of property. Generally, we do not consider arguments on appeal that lack any legal authority. *See, e.g., Ganguli v. University of Minnesota*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (declining to address allegations unsupported by legal analysis or citation). Second, an OFP is a statutory

² In the addendum to his brief to this court, McArthur included the register of actions and disposition of the criminal case that followed the June 8 incident. McArthur asks this court to "note that the said criminal charges . . . [were] later dismissed." Because this document is not part of the record, we do not consider it in our decision. *See* Minn. R. Civ. App. P. 110.01 ("The documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases."); *see also Plowman v. Copeland, Buhl & Co.*, 261 N.W.2d 581, 583 (Minn. 1977) (stating that "[i]t is well settled that an appellate court may not base its decision on matters outside the record on appeal").

proceeding. We cannot recognize defense of property in this case without adding words to the statute, which we will not do. *See generally Rohmiller v. Hart*, 811 N.W.2d 585, 590 (Minn. 2012) (“We cannot add words or meaning to a statute that were intentionally or inadvertently omitted.”). Third, Minnesota has recognized defense of property as an affirmative defense in response to criminal charges only. Minnesota Statutes section 609.06 provides the affirmative defense of property, which authorizes reasonable force in resistance of trespass or other “unlawful interference” with real or personal property. Minn. Stat. § 609.06, subd. 1(4) (2018). We decline to extend the law by recognizing defense of property as an affirmative defense to a petition for an OFP. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) (“[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court.”), *review denied* (Minn. Dec. 18, 1987).

We conclude that the district court did not err by rejecting McArthur’s defense-of-property claim because there is no legal authority supporting it as an affirmative defense to an OFP petition. Accordingly, we affirm the district court’s grant of an OFP against McArthur.

Affirmed.