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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0824**

In re the Matter of:

Hannah Marie Lagoon,
Appellant,

vs.

Steve Lagoon,
Respondent.

**Filed February 3, 2020
Reversed and remanded
Jesson, Judge**

Ramsey County District Court
File No. 62-DA-FA-19-308

Hannah Lagoon, Columbia Heights, Minnesota (pro se appellant)

Steve Lagoon, Cottage Grove, MN (pro se respondent)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

JESSON, Judge

Appellant Hannah Marie Lagoon filed a petition seeking an order for protection (OFP) against her father, respondent Steve Lagoon, based on alleged sexual abuse that occurred when she was a teenager. But after an evidentiary hearing, the district court dismissed her request, stating that the alleged harm needed to be “within the recent past.” Because we conclude that the district court applied an incorrect legal standard in denying the OFP, we reverse and remand for a new hearing.

FACTS

In March 2019, appellant Hannah Marie Lagoon (daughter) filed a petition seeking an ex parte OFP against her father, respondent Steve Lagoon (father). In her petition, daughter—now 30-years old—alleged that father sexually abused her in 2004 when she was 14. According to daughter’s petition, the abuse continued “for a long time.” Daughter alleged that she filed a police report regarding the abuse in February 2018 and feared that father would retaliate against her. And, exacerbating her fear, daughter explained that father came to TeaSource, a place she frequented, to get personal information from her. The district court granted daughter’s petition and issued an ex parte OFP against father. After father received the OFP, he requested an evidentiary hearing.

At the evidentiary hearing, the district court heard testimony from daughter, her witnesses, father, and his witness. Daughter testified that she petitioned for an OFP due to past sexual violence perpetrated by her father, of which she had recently come to understand the impact. When daughter began describing the past sexual abuse, the district

court interrupted her, noting that it had read her application and explaining that it needed to hear about “at this time, why you’re asking for an [OFP].” In response, daughter testified that she was seeking an OFP because of father’s persistence in trying to contact her, including the incident with father at TeaSource.¹

Father also testified. He explained that he had only seen daughter three times in the past year, and that he did not think he had attempted to contact her since he learned of the abuse allegations in December 2018.² And according to father, the encounter at TeaSource was neither coercive nor intimidating.³ Father explained that he respected the seriousness of the situation, would honor daughter’s wishes to be “left alone,” and that it hurt him to see daughter go through this.⁴

Based on the testimony, the district court made the following ruling:

[Daughter], it is clear to me that you have suffered a tremendous amount of trauma, and I believe you when you say that you are scared. But the legal standard here is that I have to find some sort of harm, threatened harm, or harassment within the recent past. That doesn’t mean I don’t believe you or do believe you about the allegations that you’re making, but I cannot find right now evidence of actual harm or threatened harm or harassment within the recent past. So I am dismissing the Order For Protection.

¹ In support of her petition, daughter submitted several messages she received from father. Additionally, daughter’s witnesses described her showing signs of fear during the TeaSource encounter and expressing fear because of her family’s attempts to contact her.

² On cross-examination, father acknowledged that he attempted to contact daughter on her birthday, after he learned of the abuse allegations.

³ Father also presented testimony from his wife, which corroborated his version of the encounter at TeaSource.

⁴ Although father testified that he was “shocked” by daughter’s allegations, he did not explicitly deny them during the hearing. But in his brief to this court, father denied all of daughter’s accusations.

After encouraging father to have no further contact with daughter, the district court vacated the ex parte OFP and dismissed the action. Daughter appeals.

DECISION

Daughter, who is self-represented, contends that the district court abused its discretion in denying her OFP by using an incorrect legal standard. The district court has discretion to determine whether to grant relief—including an OFP—under the Minnesota Domestic Abuse Act (the Act). *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007); *see also* Minn. Stat. § 518B.01 (2018). But when a district court bases its decision on an erroneous view of the law, it has abused its discretion. *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018).

Under the Act, victims of domestic abuse may seek relief by filing a petition for an OFP. *Id.* at 498. In order to obtain relief, a petitioner must first show that domestic abuse occurred. *Id.* at 498-99. The Act defines “domestic abuse” in the following ways:

(a) “Domestic abuse” means the following, if committed against a family or household member by a family or household member:

(1) physical harm, bodily injury, or assault;

(2) the infliction of fear of imminent physical harm, bodily injury, or assault; or

(3) terroristic threats . . . criminal sexual conduct . . . or interference with an emergency call

Minn. Stat. § 518B.01, subd. 2(a). A petitioner may establish domestic abuse by demonstrating that the facts fall within any one of the three definitions of domestic abuse.

Thompson, 906 N.W.2d at 499 (stating that “[e]ach definition is independent of the others”).

The supreme court has determined that the plain language of subdivision 2(a)(1) of the Act—defining domestic abuse as “physical harm, bodily injury, or assault”—does *not* require that the physical harm, bodily injury, or assault occur within a specific time frame. *Thompson*, 906 N.W.2d at 499. Stated differently, in order to satisfy the first definition of domestic abuse under the Act, “a petitioner need only show that ‘physical harm, bodily injury, or assault’ has actually occurred, regardless of *when* it occurred.” *Id.* at 500. Once a petitioner has established domestic abuse, the district court may then consider “all of the relevant circumstances” when deciding whether to grant the OFP. *Id.* “Relevant circumstances” can include “the timing, frequency, and severity of any alleged instances of ‘domestic abuse,’ along with the likelihood of further abuse.” *Id.*

Here, in denying daughter’s request for an OFP, the district court stated that “the legal standard here is that I have to find some sort of harm, threatened harm, or harassment *within the recent past*.” (Emphasis added.) Daughter argues that this is an incorrect legal standard because the definitions of domestic abuse found in subdivisions 2(a)(1) and 2(a)(3) of the Act do not require that harm be in the “recent past.”

We agree. Before considering all relevant circumstances when deciding whether to grant or deny an OFP, the district court must first determine whether the petitioner established that domestic abuse, as defined by the Act, occurred. And the supreme court’s decision in *Thompson* is clear: to meet the definition of domestic abuse found in

subdivision 2(a)(1), it does not matter *when* the alleged abuse occurred.⁵ *Id.* at 500. Daughter’s claimed abuse—past sexual assault—presumably falls within the definition of domestic abuse that requires “physical harm, bodily injury, or assault” and has no temporal requirement.⁶ Accordingly, the district court applied an incorrect legal standard by stating that the alleged harm needed to be in the “recent past.”

Because the district court applied an incorrect legal standard, it abused its discretion by vacating the temporary order and dismissing daughter’s petition for an OFP. *See Bauerly v. Bauerly*, 765 N.W.2d 108, 110 (Minn. App. 2009) (stating that it is an abuse of discretion to misapply the law). Accordingly, we reverse and remand for a new hearing, during which the district court permits testimony regarding the alleged past sexual abuse. And although the district court may consider all “relevant circumstances” when ultimately deciding whether to grant the OFP, it must first evaluate daughter’s allegations of past sexual abuse when deciding if daughter established that domestic abuse occurred.⁷

Reversed and remanded.

⁵ The facts in *Thompson* also deal with abuse allegations from a few years prior to a petition for an OFP. In that case, the petitioner filed a petition for an OFP in 2015 based largely on abuse that occurred in 2011-12. 906 N.W.2d at 497.

⁶ To the extent that the domestic abuse alleged by daughter may be more properly classified under the definition found in subdivision 2(a)(3), which includes criminal sexual conduct, we note that the plain language of that provision does not include a temporal requirement. *See Thompson*, 906 N.W.2d at 499 (stating that “[i]t would be inappropriate for us to read a temporal requirement, or the word ‘imminent,’ into a statutory definition when no such requirement appears in the text”).

⁷ Because we conclude that the district court abused its discretion by applying an incorrect legal standard, we do not address daughter’s other arguments.