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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0971**

In re the Matter of:

Tonia Lynn McRunnel and on behalf of minor children, petitioner,
Respondent,

vs.

Adam Joseph McRunnel,
Appellant.

**Filed March 9, 2020
Affirmed
Cochran, Judge**

Norman County District Court
File No. 54-FA-19-118

Tonia Lynn McRunnel, Ada, Minnesota (pro se respondent)

Adam Joseph McRunnel, Ada, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and
Segal, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

On appeal from the district court's grant of an order for protection, appellant Adam McRunnel argues that the district court abused its discretion when it issued an order for protection against him. Because the district court did not abuse its discretion, we affirm.

FACTS

Appellant Adam McRunnel (husband) and respondent Tonia McRunnel (wife) married in 2010, and have one child together. On April 11, 2019, wife petitioned for an order for protection (OFP) against husband. At the time, the parties were separated and lived apart. In her petition, wife explained that husband sexually assaulted her on or about April 10. Wife also described that the next day husband “hacked” into her internet accounts, tracked her location, and called her 21 times in a 24-hour period. And wife alleged that in March, husband threatened to commit suicide in front of her. Based on the petition, the district court granted an emergency ex parte OFP to remain in effect until the court held an evidentiary hearing on the petition.

On April 23, the district court held the evidentiary hearing and heard testimony from wife and husband. Wife testified that on April 10, husband came to her residence late at night to pick up the couple’s child, and he had nonconsensual intercourse with her. Wife testified that she did not consent to the intercourse and told husband “that it hurt.” Wife also testified about husband’s threat to commit suicide in March. Wife stated that husband said he was going to “blow his brains out” with a firearm in front of her. Wife also testified about husband’s repetitive calls. Wife stated that during the phone calls husband threatened to take their child.

Husband testified that on the night of the alleged sexual assault, wife asked him to spend the night and they engaged in consensual intercourse. Husband also testified that he called wife repeatedly on April 11 because he had arranged to spend time with their child but could not reach wife. Husband believed that the child was with wife and wife’s

boyfriend. He further testified that he accessed wife's internet accounts in an attempt to locate wife and their child and because he was concerned about the child being with wife's boyfriend.

After hearing the testimony, the district court granted the OFP. Concluding that wife's testimony regarding the sexual assault was credible, the district court found that domestic abuse occurred when husband engaged in nonconsensual sexual intercourse with wife and that husband's repetitive phone calls constituted harassment. Based on these findings, the district court ordered husband not to have any contact with wife and to stay at least 500 feet from her residence. The district court also granted wife temporary custody of the couple's child, and it provided husband with supervised parenting time on alternating weekends under the supervision of husband's mother. The district court found that temporary custody and supervised parenting time were necessary to ensure the safety of wife and the couple's child. Finally, because the district court determined that husband posed an imminent risk of causing substantial bodily harm to others, the district court required husband to transfer all firearms either to a third party or a law enforcement agency.

Husband appeals.

D E C I S I O N

Husband challenges the district court's decision to grant the OFP, arguing that the record does not support the district court's finding that he committed domestic abuse. Husband also argues that the district court abused its discretion by requiring supervised parenting time. We address each argument in turn.

I. The district court did not abuse its discretion by granting an OFP in favor of wife.

We review a 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). The district court abuses its discretion if its factual findings are unsupported by the record or if it misapplies the law. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). We view the record in the light most favorable to the district court's findings, and 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). But we will not make credibility determinations or reconcile conflicting evidence. *Aljubailah ex rel. A. M. J. v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017).

The Minnesota Domestic Abuse Act provides that a district court may issue an OFP upon a finding of domestic abuse. Minn. Stat. § 518B.01, subd. 4 (2018). Domestic abuse includes, "if committed against a family or household member by a family or household member," "physical harm, bodily injury, or assault," "criminal sexual conduct," as well as "the infliction of fear of imminent physical harm, bodily injury, or assault." *Id.*, subd. 2(a)(1)-(3) (2018). An OFP petitioner has the burden of proving that domestic abuse did occur. *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). 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." *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018).

Husband argues that there was insufficient evidence to find that domestic abuse occurred or was threatened with respect to wife. We disagree. Wife testified that husband engaged in intercourse with her, that she did not consent, and that she told husband that it hurt. Wife’s testimony is sufficient to establish that husband engaged in nonconsensual sexual contact. And the nonconsensual sexual contact in this case meets the definition of fifth-degree criminal sexual conduct under Minn. Stat. § 609.3451 (2018)—conduct that is included in the definition of domestic abuse. *See* Minn. Stat. § 518B.01, subd. 2(a)(3). Although husband testified, and argues on appeal, that the conduct was consensual, the district court found wife’s testimony credible and husband’s testimony not credible. We defer to the district court’s credibility determinations. *Pechovnik*, 765 N.W.2d at 99. Wife’s testimony is sufficient to support the district court’s finding of domestic abuse.

Because the finding of domestic abuse is supported by the record, the district court did not abuse its discretion when it issued an OFP in favor of wife. *See Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (noting that a district court abuses its discretion when it issues an OFP that lacks evidentiary support).

II. The district court did not abuse its discretion by ordering supervised parenting time.

Husband also argues that the district court abused its discretion when it required supervised parenting time. As part of an OFP, a court may “establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children.” Minn. Stat. § 518B.01, subd. 6(a)(4) (2018). A district court’s parenting-time decision included in an OFP will

not be reversed absent an abuse of discretion. *See Beardsley v. Garcia*, 753 N.W.2d 735, 739 (Minn. 2008) (“The decision to award temporary parenting time in an OFP is within the discretion of the district court . . .”).

Here, the district court found that husband and wife could not co-parent, and that husband’s admitted suicide threat made him unsuitable to have unsupervised parenting time. Based on these findings, the district court determined that the safety of wife and the couple’s child required supervised visitation.

Husband admits to the suicide threat, but he argues that an inability to co-parent is an insufficient basis for requiring supervised parenting time. Husband’s argument fails to fully consider the facts in the record and the reasons for the district court’s decision. The record shows that husband threatened to commit suicide in the presence of wife using a firearm, threatened to take the couple’s child in the past, and committed domestic abuse against wife. Therefore, the district court’s finding that husband poses a risk to the safety of wife and the child is supported by the record. Supervised parenting time is necessary to protect wife from further harm and ensure the safety of the couple’s child.

Husband further argues that the couple’s child would be safer in his care than in wife’s care because wife and her boyfriend “ingest illegal drugs” and wife has physically abused her children from a prior relationship. But where an appellant’s version of the facts might lead another trier of fact to make different findings, that does not render the district court’s findings clearly erroneous where the district court’s findings are supported by the record. *Crosby v. Crosby*, 587 N.W.2d 292, 296 (Minn. App. 1998), *review denied* (Minn. Feb. 18, 1999). As explained above, there is sufficient evidence to support the

district court's finding that husband poses a risk to the safety of wife and the couple's child. Accordingly, while another court may have concluded differently, the district court here did not abuse its discretion in ordering supervised parenting time.¹

Affirmed.

¹ Husband also argues that (1) the OFP is overly burdensome because it resulted in the removal of his firearms, and (2) wife had the assistance of an attorney in drafting her informal brief, which he asserts is unfair. Husband does not cite to authority and provides no further argument to support these assertions. An assignment of error in a brief not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 929 (Minn. App. 2006); see also *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) ("An assignment of error based on mere assertion and not supported by any argument or authorities in appellant's brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection."). Because these issues were not adequately briefed and no prejudicial error is obvious on mere inspection, the arguments are waived.