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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1607**

In re the Matter of:
Melissa Hall, petitioner,
Respondent,

vs.

Martin Nicholas Jurek,
Appellant.

**Filed August 24, 2020
Affirmed
Worke, Judge**

Ramsey County District Court
File No. 62-DA-FA-18-1314

Katie E.C. Kelley, Nancy Zalusky Berg, LLC, Minneapolis, Minnesota (for respondent)

Lee A. Hutton, III, Justin H. Evans, Hutton Kluz Evans LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Halbrooks,
Judge.*

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

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the district court's grant of an order for protection (OFP), arguing that the district court erred because: (1) two of its factual findings are not supported by the record; (2) respondent was not reasonably in fear of imminent harm; and (3) the totality of the circumstances did not warrant an OFP. We affirm.

FACTS

Appellant Martin Nicholas Jurek and respondent Melissa Hall had an on-again and off-again relationship that began around 2000 until they separated in October 2016. Jurek and Hall have a daughter and have lived apart since their separation.

In October 2018, Hall petitioned for an OFP against Jurek.¹ The petition stated that the most recent abuse related to medical decisions for their daughter and occurred between August and October 2018. As the basis for the petition, Hall claimed that Jurek's disruptive and aggressive behavior made her afraid of imminent harm due to his anger issues and past behavior, which included incidents where he would trap Hall in rooms or corners of their residence and yell at her. The petition also described an incident when Jurek grabbed Hall's jaw while the two were in a car, and another incident when Jurek grabbed Hall's neck at their home.

The district court granted an emergency ex parte OFP and set the matter for an evidentiary hearing. At the evidentiary hearing, Hall testified that there were times during

¹ Hall's petition was initially on behalf of herself and her daughter, but the daughter was later dismissed as a party pursuant to a stipulation between Jurek and Hall.

the relationship when Jurek would “just start drilling” her by “yelling [and] screaming.” She stated that during these incidents, she “would often be on the floor or he’d push me into a room and stand in a doorway” while Jurek stood over her. Hall testified that she was scared during these incidents because she could not stand and did not know what Jurek was going to do to her. Hall testified that she would fake asthma attacks to stop Jurek’s yelling, and it was usually effective.

Hall recounted another incident when Jurek called her profane names and grabbed her jaw to stop her from talking. Hall also testified that Jurek confronted her at their residence and grabbed her throat. In concluding her testimony, Hall stated Jurek’s behavior was “getting ramped up,” and that she was scared that Jurek would “get triggered and snap and do something to harm [her]” if she made a medical decision on behalf of their daughter that Jurek did not like.

Jurek testified that Hall would “shut down” and act violently towards him whenever they had “tough conversations.” Jurek also testified that Hall would start hyperventilating and fall to the floor due to her yelling at him. Jurek stated that when this happened, he would console her in an effort to make her feel better. Jurek’s testimony recounted an incident when Hall hit, yelled, and screamed at him while he was driving. Jurek stated that he had to block Hall from hitting him and stopped the car after pulling off of the highway. Jurek denied calling Hall profane names or grabbing her jaw, and he claimed that anything he did was in self-defense. Jurek testified that he did not grab Hall’s throat at the residence, but rather that Hall yelled at him and he put his arm against the wall.

The district court granted the OFP. In its order, the district court found two instances constituting domestic abuse: one when Jurek grabbed Hall's jaw and another when Jurek grabbed her throat. As a basis for its findings, the district court found that Hall's testimony was more credible. The district court also found Hall's testimony more credible when she described the interactions between her and Jurek that led her to be in fear of imminent harm—highlighting Hall's testimony about faking asthma attacks to stop Jurek's behavior. The district court found that the two instances of physical harm, in addition to the history between the parties, put Hall reasonably in fear of imminent harm when making medical decisions for their daughter, which also constituted domestic abuse. This appeal followed.

DECISION

Jurek argues that the district court should not have granted Hall's OFP because: (1) two of the district court's factual findings were unsupported by the record; (2) the district court's finding that Hall was reasonably in fear of imminent harm was erroneous; and (3) the district court erred by finding that the totality of the circumstances warranted an OFP. 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). "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, when viewed in the light most favorable to the decision, they are "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *Id.* (quotation omitted). We defer to the district

court's credibility determinations and do not reconcile conflicting evidence. *Pechovnik*, 765 N.W.2d at 99.

Under the Domestic Abuse Act (DAA), a district court may issue an OFP to “restrain the abusing party from committing acts of domestic abuse.” Minn. Stat. § 518B.01, subd. 6(a)(1) (2018). “Domestic abuse” includes “physical harm, bodily injury, or assault,” or “the infliction of fear of imminent physical harm, bodily injury, or assault” against a family or household member by another family or household member. *Id.*, subd. 2(a)(1)-(2) (2018).

The supreme court has held that a petitioner need only establish that past physical harm, bodily injury, or assault occurred, regardless of when such domestic abuse occurred. *See Thompson ex. rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (“[U]nder subdivision 2(a)(1) of the [DAA], a petitioner need only show that ‘physical harm, bodily injury, or assault’ has actually occurred, regardless of *when* it occurred, to satisfy the first definition of domestic abuse.”). Once a petitioner has established that domestic abuse occurred, the district court may then examine “all of the relevant circumstances proven” when deciding whether to grant the OFP. *Id.* Relevant circumstances may include “the timing, frequency, and severity of any alleged instances of ‘domestic abuse,’ along with the likelihood of further abuse.” *Id.*

Sufficiency of the evidence

Jurek argues that two of the district court's findings were not supported by the record. He contends that the district court clearly erred by embellishing Hall's testimony

and finding that Jurek choked Hall when he grabbed her throat and that Hall would fake asthma attacks to prevent Jurek's behavior from escalating.

The district court's findings are supported by the record. Hall testified that Jurek grabbed her by the throat and that she had to push his hand away. While Jurek contends that the district court embellished Hall's testimony because his actions did not rise to the level of "choking," a finding of physical harm does not require that Jurek choked Hall. Hall also testified that she would fake asthma attacks when Jurek would yell and scream at her because she was scared and did not know what Jurek was going to do to her. In addition, the district court found Hall's testimony about the neck-grabbing incident and fake asthma attacks more credible than Jurek's testimony. Therefore, the district court's findings were not clearly erroneous.

Fear of imminent harm

Jurek argues that the district court clearly erred by finding that he inflicted fear of imminent physical harm against Hall. He contends that the district court clearly erred because Hall petitioned for an OFP to prohibit him from making medical decisions for their daughter and because neither Hall's testimony nor the record established her fear of imminent or physical harm.

First, we note that Jurek mischaracterizes the basis for Hall's petition, which was that she was fearful of imminent harm by Jurek when she made medical decisions about their daughter due to his past behavior and issues with controlling his emotions. Second, the district court did not make a finding that Jurek manifested an intent to inflict fear of imminent physical harm. Rather, the district court found two instances of physical harm,

and that Hall was reasonably in fear of imminent harm when making medical decisions for their daughter based on the totality of the circumstances, all of which amounted to domestic abuse. In this case, because the district court found two instances of domestic abuse pursuant to subdivision 2(a)(1), those findings were sufficient to support the grant of the OFP, irrespective of whether Jurek inflicted fear of imminent physical harm as contemplated by subdivision 2(a)(2).

Totality of the circumstances

Jurek argues that the district court clearly erred by finding that Hall developed a fear of imminent physical harm based on the totality of the circumstances. Jurek asserts that the district court clearly erred because Hall has not established the same degree of past physical harm as was present in *Pechovnik*.

The district court did not clearly err by finding that Hall developed a fear of imminent physical harm based on the totality of the circumstances. The decision about whether to grant an OFP is within the discretion of the district court, and the DAA receives liberal construction in favor of a petitioner. *Pechovnik*, 765 N.W.2d at 98-99. As such, Hall did not need to establish the same degree of past physical harm as was present in other cases.

In addition, “[p]resent intent to inflict fear of imminent physical harm, bodily injury, or assault can be inferred from the totality of the circumstances, including a history of past abusive behavior.” *Id.* at 99. In this case, Hall testified to multiple instances of physical and verbal abuse over the span of the couple’s relationship. The district court, after making credibility determinations, then found two instances of domestic abuse and emphasized

these instances when it determined that Hall was reasonably in fear of imminent bodily harm when making medical decisions for their daughter, which also constituted domestic abuse. Therefore, the district court did not abuse its discretion by determining that an OFP was warranted based on the totality of the circumstances.

As a final matter, Jurek argues that the record demonstrates that he had not harmed or threatened to harm Hall since their separation in 2016. However, domestic abuse under subdivision 2(a)(1) of the DAA does not need to occur within a specific timeframe. *See Thompson*, 906 N.W.2d at 499 (“The fact that specific temporal language does not appear in subdivision 2(a)(1) suggests that to obtain an ordinary OFP—one that is not granted ex parte and does not call for the seizure of the abuser’s firearms—the petitioner need not demonstrate that the danger of physical harm is immediate or imminent.”).

Affirmed.