

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0300**

In re the Matter of: Charles Prudhomme, o/b/o minor child, petitioner,
Respondent,

vs.

Jennifer Kazmierczak,
Appellant.

**Filed February 22, 2021
Affirmed
Hooten, Judge**

Steele County District Court
File No. 74-FA-20-38

Charles Prudhomme, Owatonna, Minnesota (pro se respondent)

Staci L. Kelley, Kyle L. Prouty, Cornerstone Family Law, LLC, Minneapolis, Minnesota
(for appellant)

Considered and decided by Frisch, Presiding Judge; Hooten, Judge; and Smith, T.,
Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant challenges the grant of respondent's request for an order for protection (OFP) on behalf of the parties' minor child, arguing that the record does not support a finding that appellant committed domestic abuse. We affirm.

FACTS

Appellant Jennifer Kazmierczak and respondent Charles Prudhomme divorced in 2011, and Kazmierczak was awarded sole legal and sole physical custody of the parties' eldest child (the child), who was born in May 2004. In January 2020, Prudhomme petitioned the district court for an OFP on behalf of the child. In the petition, Prudhomme stated that Kazmierczak most recently abused the child during an incident on December 27, 2019, when Kazmierczak accused the child of stealing \$20. Prudhomme alleged that Kazmierczak "was angry and yelling" and "used her right hand" to hit the child's face, leaving him with a bloody nose. Prudhomme alleged that Kazmierczak verbally assaulted the child by saying, "f---ing liar," and calling the child a "f---ing thief." Prudhomme also alleged that Kazmierczak "threatened to leave [the child] in [his] room for three days" and made him sit on the couch for 21.5 hours. Prudhomme claimed that the child is "scared to go back to [Kazmierczak's] due to the anger [Kazmierczak] displays." Prudhomme also indicated concern for the child's safety due to Kazmierczak's history and previous responses when she was angry.

Prudhomme then described Kazmierczak's past behavior, alleging that she "spanked [the child] with a wooden spoon, a plastic spoon, and a belt," leaving marks on the child. Prudhomme also alleged that Kazmierczak had "shoved [the child] on the floor and kicked [the child] on his side," leaving a bruise.

After issuing an emergency ex parte OFP, the district court held a hearing in which both parties proceeded pro se and a court-appointed guardian ad litem appeared on behalf of the child. The district court heard testimony from Prudhomme, Kazmierczak, and the

child. The parties' younger, 12- and 13-year-old children also testified along with Kazmierczak's husband.

Prudhomme testified that he was requesting an OFP on the child's behalf based on two incidents. Prudhomme testified about the most recent incident, when the child texted him in 2017 because Kazmierczak had hit him twice with a belt. Prudhomme also testified that on December 28, after a second incident, Kazmierczak called him to pick up the child because she was having behavioral issues with him. Prudhomme explained that after he picked up the child, he was "complaining about his nose hurting" the whole ride home and "saying that he didn't understand why [Kazmierczak] hit him." Prudhomme said that he enrolled the child in school because he believed that the child was to stay with him for a while. Prudhomme testified that after he finalized the papers to enroll the child in school, Kazmierczak said that she was coming to pick up the child. Prudhomme stated that at that point, the child said that "he did not want to go home, and that he was tired of being hit all the time," so Prudhomme filed for the OFP. Prudhomme testified that he had no personal knowledge of any of the alleged instances of domestic abuse and that his testimony was based on what the child had told him.

At the hearing, the child testified that he has been afraid of being hurt when Kazmierczak is mad and that she has sometimes done things to intentionally cause him physical injury or pain. He mentioned being spanked by Kazmierczak a couple of times for taking candy without asking. He also mentioned being "spanked with a belt on two different occasions" when he was 12 or 13 years old. Regarding the most recent incident on December 27, 2019, the child testified, "[Kazmierczak] smacked me in the face and

made my nose bleed because I found \$20 and she thought I stole it.” He testified that he was looking down when Kazmierczak intentionally smacked him “right in the nose” with an open hand after calling him a “f---ing liar.” The child testified that he had been smacked more times than he wished to count.

When asked by the district court if he had anything further to add, the child indicated that Kazmierczak had previously pushed him to the floor a few times and kicked him one time. He could not initially recall all of the details of these incidents, only that Kazmierczak said something, shoved him to the ground, kicked him, and then sent him to his room because he had “pushed [his] brother or something and she had had enough of it.” When prodded by the district court, the child claimed that Kazmierczak kicked him on the right side at the bottom of his rib cage and that, while he did not have any bruises from the incident, his side stayed sore for “a couple of hours.”

When questioned by Prudhomme, the child testified that he has never had a way to document any of his mother’s physical attacks because his mother always took his phone away whenever he was in trouble, which prevented him from contacting anyone unless he “took a phone that no one was using ahead of time.” When cross-examined by Kazmierczak, the child said that she had hit him on the head and called him a “f---ing thief,” and that he sat on the couch after the incident until Prudhomme arrived to pick him up. The child stated that his mom and stepdad allow him to keep “twelve pocket knives or hunting knives” in his bedroom, but that he has never used a knife against anyone in the house or threatened to use a knife against any of his siblings.

Kazmierczak testified about the December 27 incident, explaining that her husband caught the child stealing. She testified that, after she came home from work, she asked the child about the money, which he swore he had found in the laundry. Kazmierczak stated that she told the child, “just quit your f-ing lying” and walked out of the room disappointed, but not angry. Kazmierczak said that she directed the child to sit on the couch until she knew what to do with him and then reached out to his stepmother to see if she would come and pick him up.

At this point in Kazmierczak’s testimony, the district court stopped her and asked her about the allegations regarding the incident in which she slapped the child because Kazmierczak still had not mentioned it. Appellant responded, “There wasn’t one. That’s exactly it. I walked in the bathroom. I asked [the child] what do I need to do to send you to your room for three days. What is going to help? Quit your f-ing lying and I told him to go to the couch and that was the end of it.” The district court confirmed that Kazmierczak was denying that she ever physically touched the child, and Kazmierczak responded, “I did not physically touch him in any way, shape, or form that day.”

However, Kazmierczak admitted to spanking the child with a belt in 2017 “after [the child] had his brother by the throat against a wall, put his brother through a door, cracked his head on a granite countertop and was holding him on the ground choking him.” Kazmierczak stated that the swats “stung for a few seconds,” but “left no marks” based on the child’s own report.

The district court asked Kazmierczak about the allegation that she pushed the child down and kicked him, to which Kazmierczak responded that she had “no idea.” The district

court asked Kazmierczak to confirm that she had never kicked the child, to which she responded, “I have multiple times had to intervene when he is attacking his siblings, yes. Have I ever gone right out and kicked him or hurt him? No. Since the incident with the belt he hasn’t been spanked a single time; I haven’t [laid] a hand on him.”

The district court questioned Kazmierczak on what kinds of services she has sought out for the child. Kazmierczak described trying counseling for him, although she said that he refused to participate. She also mentioned that she was working on a residential program, Teen Challenge Youth Camp, and that the child had also been involved in Frontiersmen Camping Fellowship, Royal Rangers, and church programs. The district court inquired if Kazmierczak had attempted anything with a family component because “typically, when there is dysfunction within a household everybody in the household has some involvement in the dysfunction.” Kazmierczak responded that “the issue is [the child’s] behavior and [his] choices, not anyone else picking on [the child].”

Kazmierczak then called the child’s 13-year-old sister to testify. His sister testified that there has never been a time when she has been afraid of being physically hurt in Kazmierczak’s home or been afraid of anyone else in the home being physically hurt. She testified that her elder brother hits her, and that although she would prefer he not hit her, she is not afraid of him. Next she testified to being present the night when Kazmierczak confronted her elder brother about the missing money. She thought her elder brother looked upset and angry after Kazmierczak questioned him. She stated that she did not see Kazmierczak slap him that evening “because it didn’t happen.” She also testified that her elder brother did not have a bloody nose and that he lies all the time.

Next, Kazmierczak called the child's 12-year-old brother to testify, who testified that there were never any times where he was afraid he would be hurt at Kazmierczak's house and that no one in the house had ever intentionally hurt him physically. He also testified that he was present during the alleged incident between Kazmierczak and his elder brother. He described witnessing Kazmierczak and his brother argue back and forth about the missing money and that Kazmierczak repeatedly used the "F word" during the argument. He stated that (1) he is not afraid of his mother, (2) his mother does not hit any of the children, (3) he is not abused, (4) Kazmierczak did not hit his brother, and (5) his brother did not have a bloody nose when he was sitting on the couch after the argument. He also stated that the last time that he saw his brother get spanked by a spoon or a belt was "about two years ago."

Appellant called her husband, Jeffery Kazmierczak (Jeff), as her final witness. Jeff and Kazmierczak were giggling at the beginning of Jeff's testimony, and the district court reminded them that the proceeding was "not a joking or laughing matter." Jeff testified that he resides in the home with Kazmierczak and that he witnessed some of the incident between Kazmierczak and the child. He said that he witnessed Kazmierczak and the child arguing about money, which was "really loud," but he never saw Kazmierczak hit him, nor did he see the child with a bloody nose that evening. Jeff also testified that he had not seen Kazmierczak spank any of the kids in the past two to three years.

The district court found that Kazmierczak committed domestic abuse against the child "by slapping him, by kicking him, by screaming in his face," and "by using derogatory language around him," and that those instances "were beyond what the law

would tolerate as far as reasonable discipline.” The district court also found that Kazmierczak is an “adult who is not in control” and that the child “has been negatively impacted by [Kazmierczak’s] attitude.” The district court was particularly troubled by Kazmierczak’s attitude “that this is all [the child’s] problem,” as well as “the level of unconcern by [Kazmierczak] that at times has bordered on a contemptuous attitude toward [the child].”

In making these determinations, the district court found the child’s testimony to be credible because the child “talked about what [the child] had experienced, and [the child] also talked about having the best of times at [Kazmierczak’s] house.” In contrast, the district court did not find Kazmierczak’s testimony to be credible because “no one in their right mind” would allow the child to have “knives and a crossbow in his room” if he was, in fact, “the violent little terrorist that ha[d] been described” by Kazmierczak. The district court found that Kazmierczak’s credibility was also hurt “in part by her demeanor in the courtroom,” specifically her “difficulty respecting the seriousness of the situation and of the allegations.” The district court noted that “when [Kazmierczak] was given the opportunity to testify she did not immediately deny the allegations.” The district court explained that “[i]t was also clear from the other children in the household who testified that they are not afraid of [the child].”

The district court granted the OFP for a period of two years, subject to “parenting time at a supervised parenting center at [Kazmierczak’s] expense” “when the [minor] child’s therapist agree[s] the child is ready.” Kazmierczak appeals.

DECISION

Kazmierczak challenges the district court’s decision to grant Prudhomme’s petition for an OFP, arguing that the OFP is not supported by the record and that “[t]he district court was eager to indict [Kazmierczak] for what it perceived as poor parenting decisions without regard to whether her actions . . . fit the definition of abuse under the Domestic Abuse Act.”

“We review the 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 when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (quotation omitted). 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 allows victims of domestic abuse to petition for an OFP. Minn. Stat. § 518B.01 (2020). To obtain relief in the form of an OFP, the petitioner must allege that domestic abuse occurred and explain “the specific facts and circumstances from which relief is sought.” Minn. Stat. § 518B.01, subd. 4(b). Under the Minnesota Domestic Abuse Act,

‘[d]omestic 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)(1)-(3). 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*, 906 N.W.2d at 500.

Kazmierczak argues that the district court’s finding that she committed domestic abuse by slapping and kicking the child was clearly erroneous. She contends that there is insufficient evidence that she physically harmed, injured, assaulted, or inflicted fear of imminent physical harm upon him. Kazmierczak argues that the district court “relied solely upon [the child’s] testimony,” in finding that she harmed the child by slapping and kicking him, but that “the record does not support the [d]istrict [c]ourt’s reliance on [the child’s] credibility.” The district court heard testimony from the child’s sister and brother, as well as his stepfather, but Kazmierczak argues that the district court “did not assess their credibility or appear to consider their testimony when determining if there was domestic abuse against [the child].” Kazmierczak maintains that that testimony “squarely contradicted the assertion by [the child] that he was slapped, kicked, and had a bloody nose.” Kazmierczak contends that the child never testified as to whether Kazmierczak’s

statements caused him to fear imminent physical harm. She also argues that “just because the [district court] believes the interactions between [Kazmierczak] and [the child] go beyond allowable discipline,” it “does not automatically mean that [Kazmierczak’s] acts meet the definition of domestic abuse.”

We conclude that the evidence in the record is sufficient to support the district court’s finding that Kazmierczak committed domestic abuse by slapping, kicking, and screaming at the child. The child’s testimony established that Kazmierczak domestically abused him as defined by Minn. Stat. § 518B.01, subd. 2(a). The child testified that (1) Kazmierczak intentionally smacked him “right in the nose” with an open hand, after calling him a “f---ing liar”; (2) he had been smacked more times than he wished to count; (3) Kazmierczak had pushed him to the floor and kicked him; (4) he fears being hurt when Kazmierczak is mad; and (5) Kazmierczak has sometimes done things to intentionally cause him physical injury or pain. This testimony supports a finding that Kazmierczak physically harmed the child and inflicted the fear of imminent physical harm upon the child by slapping him, kicking him, and screaming in his face. The district court explicitly found the child’s testimony to be credible and found Kazmierczak’s testimony to be less credible. As noted above, we do not make credibility determinations and will not reconcile conflicting evidence. *Aljubailah*, 903 N.W.2d at 643. Because the child’s testimony establishes that domestic abuse occurred, the district court explicitly determined that his statements were credible, and we do not make credibility determinations, the district court did not abuse its discretion by issuing the OFP.

Affirmed.