

*This opinion is nonprecedential except as provided by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
A20-0727**

In re the Matter of: Madeline Jane McGill,
Respondent,

vs.

Elton James Curtis,
Appellant.

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

Cass County District Court
File No. 11-FA-20-251

Michael D. Udem, Udem Law Office, Walker, Minnesota (for respondent)

Elton Curtis, Moose Lake, Minnesota (pro se appellant)

Considered and decided by Bryan, Presiding Judge; Ross, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the issuance of an order for protection (OFP), appellant argues that the district court violated his due process rights by declining to transport him to the hearing so he could appear in person. Had he appeared at the hearing, appellant would have contested the statements in the petition regarding his attempts to contact the petitioner after the expiration of a prior OFP in 2019. Because the district court issued the OFP based on appellant's three criminal convictions for violating previous OFPs and not based on

appellant's attempted contacts, we conclude that the claimed constitutional error was harmless beyond a reasonable doubt, and we affirm the district court.

FACTS

In 2007, appellant Elton Curtis sexually assaulted respondent Madeline McGill, resulting in multiple OFPs and his eventual incarceration. On February 7, 2020, McGill petitioned for an OFP against Curtis. The petition listed two prior OFPs protecting McGill from Curtis that had expired. In addition, the petition alleged that Curtis had called McGill from prison on January 8, 2020, and again on February 6, 2020. The district court issued the ex parte OFP on February 7, 2020. On February 10, 2020, Curtis received notice of the ex parte OFP. Curtis requested a hearing and included a letter to the district court judge explaining that he attempted to call McGill three times since the expiration of the last OFP in 2019. He asserted that he never threatened McGill in these calls and invited the district court “to get those calls from [the jail]” because they are recorded. Curtis also stated that McGill “never picked up” when he tried to call her. In closing, Curtis wrote that “the court will have to come get me to appear for the hearing.”

The district court set the hearing for February 24, 2020, and informed Curtis in a hand-written Post-it note affixed to the hearing notice that “[t]he court does not transfer for this type of hearing. If it is allowed, you’d need to arrange this with the correctional facility.”¹ Prior to the hearing, Curtis submitted an affidavit alleging that the petition

¹ Curtis submitted a photo copy of the hearing notice with the Post-it note as part of his addendum. The documentary record submitted from the district court does not include the Post-it note on the hearing notice. For purposes of this appeal, we refer to the version of the hearing notice included in the addendum.

included false statements regarding his attempts to contact McGill after the expiration of the most recent prior OFP in 2019. On the day of the hearing, Curtis filed a memorandum and a second affidavit. In the memorandum, he argued that the district court's refusal to allow him to appear in person violated his due-process rights. Curtis requested that the district court dismiss the OFP or continue the hearing until the district court complies with his request for transportation. In the affidavit, Curtis again asserted that his phone contacts since the expiration of the most recent prior OFP in 2019 cannot support an OFP because McGill "was 'OK' with me calling her" and because McGill never answered his phone calls. Curtis did not appear at the hearing either in person or by phone.²

The district court found that Curtis had "reasonable notice and opportunity to be heard" and that the statutory procedures for service were followed. At the hearing, the district court received three certificates of conviction showing that Curtis violated prior OFPs in April 2008, July 2008, and June 2016. The district court issued an OFP based on Minnesota Statutes section 518B.01, subdivision 6a(b)(1) (Supp. 2019), finding that McGill "has already had an [OFP] against [Curtis], and [Curtis] violated the order," and that exhibits 1, 2, and 3 established multiple prior violations of OFPs. Citing Minnesota

² Curtis included some additional facts in his memorandum before this court. Curtis asserts that his case manager made statements to a district court clerk in a telephone conversation regarding the possibility of continuing the hearing. Curtis does not argue that the case manager's request was a motion to continue the hearing or that the district court violated his due-process rights in denying the request. Because Curtis does not raise this issue, and because there is no decision for us to review, we need not address whether Curtis's due-process rights were affected by the district court's scheduling decision.

Statutes section 518B.01, subdivision 6a(c)(1) (Supp. 2019), the district court issued the OFP for 50 years. This appeal follows.

DECISION

Curtis argues that the district court violated his due-process right to appear in person at an OFP hearing. Because the district court issued the OFP based on Curtis's prior violations, and Curtis does not challenge this basis, we conclude that any alleged constitutional error is harmless beyond a reasonable doubt.

Both the United States Constitution and the Minnesota Constitution provide that no person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Not every due process violation, however, warrants reversal. “[P]rejudice as a result of the alleged violation is an essential component of the due process analysis.” *In re Child of B.J.-M. & H.W.*, 744 N.W.2d 669, 673 (Minn. 2008); *see also* Minn. R. Civ. P. 61 (requiring this court to disregard harmless error); *Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (requiring an appellant to establish both error and resultant prejudice).

The Domestic Abuse Act governs issuance of an OFP. Minn. Stat. § 518B.01 (2018 & Supp. 2019). The statute provides specific bases for an initial OFP, *id.*, subds. 2, 4, 6, and separate bases for a subsequent OFP, *id.*, subd. 6a(a) (“the court may extend the relief granted in an existing [OFP] or, if a petitioner’s [OFP] is no longer in effect when an application for subsequent relief is made, grant a new order”). If an OFP is no longer in effect, the district court may grant a new order upon a showing that the respondent has violated a prior OFP. *Id.*, subd. 6a(b)(1). “A petitioner does not need to show that physical

harm is imminent to obtain an extension or a subsequent order under this subdivision.” *Id.*, subd. 6a(b); *see also Rew v. Bergstrom*, 845 N.W.2d 764, 776 (Minn. 2014) (“Minn. Stat. § 518B.01, subd. 6a, does not require a district court to make a finding of ‘domestic abuse’ before it extends an OFP.”). In addition, the district court may issue a subsequent or extended OFP “for a period of up to 50 years, if the court finds: (1) the respondent has violated a prior or existing [OFP] on two or more occasions; or (2) the petitioner has had two or more [OFPs] in effect against the same respondent.” Minn. Stat. § 518B.01, subd. 6a(c).

In this case, the district court issued a subsequent, 50-year OFP. The district court found that Curtis had three prior convictions for OFP violations. The certified convictions admitted as exhibits 1, 2, and 3, are sufficient under section 518B.01, subdivision 6a(b)(1), to issue a subsequent OFP and sufficient under subdivision 6a(c)(1) to issue a 50-year order. Curtis does not challenge these findings on appeal. Nor does he argue that he would have challenged evidence of his prior violations had he appeared in person at the hearing.³ Instead, Curtis argues that, had he been at the hearing, he would have presented testimony regarding the facts of his attempts to contact McGill after the expiration of the most recent prior OFP in 2019. Because such evidence does not relate to the statutory bases for the district court’s decision, Curtis’s presence at the hearing would not have changed the

³ The Minnesota Supreme Court has held that a person has no protected due-process interest in the opportunity “to collaterally attack facts that a court has found in a prior judicial proceeding—such as the three previous findings that [appellant] had violated an OFP.” *Rew*, 845 N.W.2d at 787. Thus, even if Curtis appeared in person, the district court would not have violated Curtis’s due-process rights had it prevented him from collaterally attacking the prior convictions.

outcome. Curtis has not identified a reversible error, and under these circumstances, we conclude that any alleged error was harmless beyond a reasonable doubt.

Affirmed.