

*This opinion is nonprecedential except as provided by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
A20-0885**

In re the Matter of: Jennifer Lynn Gaughan, petitioner,
Respondent,

vs.

Patrick Michael Gaughan,
Appellant.

**Filed April 26, 2021
Affirmed
Reilly, Judge**

Washington County District Court
File No. 82-FA-18-930

Karen I. Linder, Linder, Dittberner & Winter, Ltd., Edina, Minnesota (for respondent)

Erick G. Kaardal, Mohrman, Kaardal & Erickson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Reilly, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant-husband challenges the district court's grant of an extension of an existing order for protection in favor of respondent-wife. We affirm.

FACTS

This appeal arises out of separation proceedings between petitioner-respondent Jennifer Lynn Gaughan (wife) and respondent-appellant Patrick Michael Gaughan (husband). In February 2018, wife petitioned the district court for an order for protection (OFP) on behalf of herself and the couple's three minor children. Wife alleged that husband had a history of committing domestic violence against her, including times when he hit her on the head, pushed her, pulled her hair, kicked her in the knee, pushed her head into the wall, poured water on her, and forced her to have sex with him against her wishes. Wife also asserted that husband held a scissors and a butcher knife to her face and threatened to cut her hair and burn the house down. Wife stated that four of their children, including the three minor children, witnessed this abuse. Wife requested temporary custody of the minor children and requested that husband not be granted parenting time because the children witnessed the assault and were afraid of husband.

A day later, the district court granted an ex parte OFP against husband. The district court restrained husband from having contact with wife and the minor children, and excluded husband from the family home and the parties' church. The district court determined that the safety of wife and the children required that wife would have temporary sole legal and physical custody of the minor children. The district court also scheduled a hearing to address the relief requested in the petition.

The parties then stipulated to the filing of an OFP "without findings of fact and conclusions of law that [husband] committed domestic abuse upon [wife] and their joint minor children." The stipulation also provided that wife "shall have the right, at her sole

discretion, to elect to extend the effective period of this Order for one additional year, upon the filing of an affidavit exercising said right.” In April 2018, the district court adopted the parties’ stipulation, and filed an OFP consistent with that stipulation.

In December 2018, the district court judge presiding over the parties’ legal-separation proceeding filed an order for temporary relief, recognizing that the OFP had awarded wife temporary sole legal and physical custody of the minor children, and stating that “[u]pon expiration of the Order for Protection . . . , the parties will share joint legal custody of the children.”

In January 2019, wife filed an affidavit exercising her right to extend the effective period of the OFP for one more year. The district court granted the extension in February 2019. Husband challenged the OFP extension and moved to vacate the OFP. The district court denied his request because the OFP extension had been incorporated into the parties’ original stipulation. We affirmed the district court’s decisions to extend the OFP and to deny the motion to vacate. *Gaughan v. Gaughan*, No. A19-0948, 2019 WL 5690701, at *1 (Minn. App. Nov. 4, 2019). We held that:

The record supports the district court’s conclusion that husband understood the meaning and potential ramifications of . . . the stipulation that he and his attorney signed. That paragraph unambiguously provides that wife “shall have the right, at her sole discretion, to elect to extend the effective period of this Order for one additional year, upon the filing of an affidavit exercising said right.”

Id. at *3.

In March 2020, before the expiration of the extended OFP, wife applied to extend the OFP for another five years. Wife asserted that husband violated the OFP by trying to

contact her through mutual friends and that she remained in fear of him. The district court filed an emergency ex parte OFP extension, determining that wife needed an order for protection. The district court did not include the minor children in the emergency ex parte extension order. The district court found that the prior custody order giving mother custody of the minor children “remains in effect,” but that “the children are not protected persons in this file and custody is not controlled by this file.” The district court noted that husband and wife would now share joint legal custody of their minor children under the order in the legal-separation proceeding.

In May 2020, husband moved to dismiss the emergency ex parte OFP extension because he had not violated the existing OFP and wanted to have a parenting role with the children. Following a hearing, the district court issued an order in June 2020 denying husband’s dismissal motion. The district court determined that wife “provided the [district] [c]ourt with extensive information about why she is in fear of physical harm from [husband],” and, because of that evidence and husband’s history of abuse, “has established that she is reasonably in fear of physical abuse from [husband].”

Husband appeals the March 2020 emergency ex parte OFP extension, and the June 2020 order denying his motion to dismiss.

DECISION

I. The district court did not abuse its discretion by extending the OFP.

Husband argues that the district court abused its discretion by granting the emergency ex parte extension of the OFP. We review the district court’s grant of 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 it bases its decision on an erroneous view of the law or if the decision is against logic and the facts on record. *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). We view the record in the light most favorable to the district court’s findings and will not reverse unless we are left with the “definite and firm conviction that a mistake has been made.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations omitted). We also defer to the district court’s credibility determinations and do not reweigh the evidence presented. *Id.* But statutory construction is a question of law, which we review de novo. *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007).

“Upon application, notice to all parties, and hearing, the court may extend the relief granted in an existing order for protection” Minn. Stat. § 518B.01, subd. 6a(a) (2020).

The terms of an existing OFP may be extended upon a showing that:

- (1) the respondent has violated a prior or existing order for protection;
- (2) the petitioner is reasonably in fear of physical harm from the respondent;
- (3) the respondent has engaged in act of harassment within the meaning of section 609.749, subdivision 2; or
- (4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

Id., subd. 6a(b)(1)-(4) (2020). The petitioner need only show one of these four alternatives.

Braend v. Braend, 721 N.W.2d 924, 927 (Minn. App. 2006).

Husband argues that the OFP extension is unwarranted because the district court did not specifically find that he violated the existing OFP or abused wife. Husband notes that

the parties stipulated that there would be no findings of fact about domestic abuse. Husband recognizes that wife alleged in her affidavits that husband abused her, but claims that wife never provided “actual evidentiary support” for these allegations. Husband argues that, without an initial finding of abuse, the district court cannot extend the OFP.

We disagree. The statute only requires that one of the four factors be met to grant an extension. Minn. Stat. § 518B.01, subd. 6a(b)(1)-(4); *Braend*, 721 N.W.2d at 927. Nor does a petitioner need to show that physical harm is imminent to obtain an OFP extension. Minn. Stat. § 518B.01, subd. 6a(b); *see also Ekman*, 812 N.W.2d at 895 (recognizing that petitioner need not show actual physical harm or even imminent harm to extend existing OFP).

Here, the district court determined that wife was reasonably in fear of physical abuse from husband. The district court found that wife provided “extensive information about why she is in fear of physical harm” from husband. The district court found that husband spoke with third parties about wanting to contact wife to get her signature on certain documents, which constitute “sufficient reason for [wife] to believe that [husband] was actually attempting to contact her.” The district court also determined that husband’s actions, “combined with [wife’s] sworn affidavits stating she was physically abused by [husband] during the marriage, are a sufficient basis for an objectively reasonable fear that [husband] would physically harm [wife] without an order for protection.”

The record supports the district court’s findings. Wife submitted an affidavit stating that husband violated the previous OFP in July 2018, by asking a mutual friend to talk to wife on husband’s behalf. Wife states that the mutual friend sent her an email message

relaying husband's message. The email allegedly contained an attachment with a request to dismiss the OFP, which husband had filled out and wanted wife to sign. Wife reported this contact to the police. In September 2018, husband attended church—a protected place in the OFP—and startled the couple's minor child. The child reported husband's presence to the church office, and the church notified the police. Wife asserted in her affidavit that she has been fearful of husband in the last two years and is "extremely afraid that [husband] will never stop abusing me, physically, sexually, and emotionally unless there is an active Order for Protection in place." Wife reports that she has been diagnosed with PTSD as a result of husband's physical abuse and continues to see a therapist regularly. Wife asserts that two of the parties' minor children also continue to see therapists and have also been diagnosed with PTSD.

Caselaw recognizes that a district court acts within its discretion by considering evidence of past abuse. *Thompson*, 906 N.W.2d at 500; *see also Braend*, 721 N.W.2d at 927 (concluding that repeated phone calls, combined with circumstances leading to prior OFP, was sufficient to support a finding that petitioner feared physical harm). The district court determined that one of the statutory factors was present because wife was reasonably in fear of physical abuse from husband. The district court supported this finding by pointing to husband's attempt to contact wife through a mutual friend and wife's affidavit statements that husband physically abused her during the parties' marriage. We have upheld an OFP extension in similar cases. *See, e.g., McIntosh*, 740 N.W.2d at 10-11 (affirming OFP when husband violated previous order and harassed and stalked wife); *Braend*, 721 N.W.2d at 927-29 (affirming OFP where husband's repeated phone calls to

wife caused her to fear physical harm). Given the clear statutory language and the holdings in *Braend* and *McIntosh*, we discern no abuse of discretion in the district court’s decision to extend the OFP because wife established that she was reasonably in fear of physical abuse from husband.

II. The district court did not abuse its discretion by extending the OFP while the parties share temporary joint legal custody of the children.

Husband argues that the district court abused its discretion by extending the OFP while the parties share temporary joint legal custody of their children, because such an arrangement will require the parents to speak to one another about their children.

In the legal-separation proceeding, the district court issued an order in December 2018, granting temporary sole legal custody of the children to wife. The order provided that upon expiration of the existing OFP, “the parties will share joint legal custody of the children.” In March 2020, the district court here filed an emergency ex parte OFP extension. The order did not include the minor children. The district court determined that the custody order in the legal-separation proceeding “remains in effect,” but that “the children are not protected persons in this file and custody is not controlled by this file.” The March 2020 order therefore recognized that husband and wife now share joint legal custody of their minor children.

Husband argues that he will need to communicate with wife in order to meaningfully participate in sharing legal custody with her. Husband argues that he is at risk of violating the OFP every time he communicates with wife about the children. Husband’s argument seems to imply that the order filed in the legal-separation proceeding limits the district

court's ability to extend the OFP. But the issuance of a child-custody order is not determinative. The Domestic Abuse Act recognizes that an OFP may be granted, even if there is a pending action between the parties. Minn. Stat. § 518B.01, subd. 4(d) (2020) (providing that “[a] petition for relief may be granted, regardless of whether there is a pending action between the parties”); *see also Braend*, 721 N.W.2d at 928-29 (relying on section 518B.01, subd. 4(d), for the proposition that a dissolution proceeding does not preclude the issuance of an OFP). We cannot limit the district court's authority in a manner that would conflict with statute.

We also note that this record demonstrates that there are mechanisms in place to allow for communication between the parents about the children. The parties agreed in the stipulated OFP to use the services of a Parenting Consultant to help them make decisions about their children. In October 2020, after the district court issued the extended OFP, the parties agreed to amend the OFP such “that it will not be a violation of the [June 2020] Order for Protection for [the parties] to communicate through Our Family Wizard (“OFW”)¹ for the purpose of exercising joint legal custody of the minor children.” The parties also agreed “to grant unlimited access to all OFW communications and posting to their Parenting Consultant.”

Because the order in the legal-separation proceeding does not preclude the issuance of an OFP and the parties have a way to communicate with one another about the children,

¹ The OFW is a parental communication application that enables parents to communicate about their minor children.

the district court did not abuse its discretion by extending the OFP, while the parties share temporary joint legal custody of the children.

Affirmed.