

*This opinion is nonprecedential except as provided by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
A20-0968**

In the Matter of: Gohar Yesayan,
Respondent,

vs.

Sarkis Mkhsyan,
Appellant.

**Filed April 19, 2021
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-DA-FA-20-2499

Gohar Yesayan, (pro se respondent)

Ryan J. Grove, Rogosheske, Rogosheske & Atkins, PLLC, South St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the issuance of an order for protection (OFP), appellant challenges the district court's factual findings and the district court's decision to grant the OFP petition. Because the record supports the district court's findings and because the decision was not against logic, we affirm the district court's decision.

FACTS

On May 7, 2020, respondent Gohar Yesayan petitioned for an OFP against appellant Sarkis Mkhsyan. At the time of the petition, Yesayan and Mkhsyan had been married for 17 years and had three minor children together. In her petition, Yesayan alleged that Mkhsyan had abused her and that the most recent abuse occurred on May 6, 2020. The petition indicated that Mkhsyan forced Yesayan out of their home, threatened her, said he was going to keep their children, took her phone, and cut off her access to financial resources. Yesayan also alleged that Mkhsyan hit her on May 1, 2020: “After my visit with the doctor for our newborn baby, he claimed I was late, got angry and hit me in the head.” The district court issued an ex parte OFP on May 8, 2020. Mkhsyan was personally served with the ex parte OFP and requested an evidentiary hearing on the matter on May 13, 2020.

On June 9, 2020, the district court held an evidentiary hearing. Yesayan testified that on May 1, 2020, Mkhsyan hit her on the head in anger:

Q: When was the last time Mr. Mkhsyan physically abused you?

A: May 1st.

Q: What happened that day?

A: I had taken my young child to the doctor’s appointment.

Q: What is the name of your youngest child?

A: [A.M.].

Q: What happened when you took [A.M.] to the doctor’s appointment?

A: Unfortunately, the appointment lasted too long. When I came home, [Mkhsyan] was very upset. He needed his car so that he can go to work. So at that time he said really bad words to me and hit me on the head.

Q: Where did this happen?

A: In our home.

Q: And who was there?
A: Myself, [Mkhsyan], and [A.M.].
Q: Were you holding [A.M.]?
A: Yes.
Q: How did you feel when this happened?
A: I was very afraid.

Yesayan also testified that the parties got into an argument on May 5, 2020, and that on that day, Mkhsyan took away her telephone and told her she had to leave the house. Yesayan used her son's phone to contact her friend to pick her up, and she ultimately left the home with the parties' two youngest children on May 6, 2020. The parties' oldest son remained with Mkhsyan. Yesayan also testified that Mkhsyan hit her in January 2020 when she was pregnant and that he abused her throughout their marriage.

In his testimony, Mkhsyan denied hitting Yesayan, causing her physical harm, putting her in fear of immediate physical harm, or threatening her with physical harm. But he did acknowledge that there was a dispute between his family and her family, and that he sent her family members a heated text message after Yesayan left with the two younger children. The parties' oldest son also testified briefly at the evidentiary hearing. He testified about the events on May 5, 2020, but not about the events of May 1, 2020. The oldest son explained that on May 5, 2020, Mkhsyan yelled for him to come downstairs and "get your mother away from me" and that he noticed "she was trying to . . . make it physical." He did not see his father hit his mother. Yesayan also presented the testimony of her friend who stated that Yesayan told her in a conversation on May 3, 2020, that Mkhsyan was physically abusive toward her. This witness did not testify regarding personal knowledge of any specific incidents of abuse.

Following the evidentiary hearing, the district court found Yesayan to be more credible than Mkhsyan. In addition, the district court made the following finding about the parties' son's testimony: "While the parties' [oldest son] testified that he did not witness any abuse on May [5], the Court did not hear testimony that he was present during the other incidents of domestic abuse to which [Yesayan] testified." Based on Yesayan's testimony that Mkhsyan had hit her on the head, the district court determined that Yesayan had proven by a preponderance of the evidence that Mkhsyan committed domestic abuse against her. The district court granted the petition, and Mkhsyan appeals.

DECISION

Mkhsyan makes two primary arguments on appeal. First, he argues that the district court erred when it made the following three findings: (1) Yesayan was credible; (2) Mkhsyan was not credible; and (3) the parties' son did not witness any abuse on May 5, 2020. Mkhsyan believes the evidence presented does not support the credibility findings and that the son's testimony disproves the alleged act of abuse on May 1, 2020. Second, Mkhsyan challenges the sufficiency of the evidence, arguing that Yesayan's testimony that he hit her on the head cannot support the district court's decision to grant the petition and issue the OFP. Neither argument has merit.

The Domestic Abuse Act governs issuance of an OFP. *See* Minn. Stat. § 518B.01 (2020). The statute provides that a district court may issue an OFP upon a finding of domestic abuse. Minn. Stat. § 518B.01, subd. 4. "[I]f committed against a family or household member by a family or household member," domestic abuse includes the following conduct: "physical harm, bodily injury, or assault," "criminal sexual conduct,"

and “the infliction of fear of imminent physical harm, bodily injury, or assault.” *Id.*, subd. 2(a). An OFP petitioner has the burden of proving that domestic abuse occurred by a preponderance of the evidence. *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).

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). In doing so, “[w]e neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). We review a district court’s decision granting an OFP petition for an abuse of discretion. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). A district court abuses its discretion by resolving the matter in a manner that is against logic and the facts. *Beardsley v. Garcia*, 731 N.W.2d 843, 848 (Minn. App. 2007) (quotation omitted), *aff’d*, 753 N.W.2d 735 (Minn. 2008).

First, Mkhsyan argues that the district court erred in determining that Yesayan was credible and that he was not credible. Because these findings relate to the district court’s credibility determinations, they are exclusively within the province of the district court. Mkhsyan also challenges the district court’s factual finding regarding the son’s testimony, arguing that this testimony conflicts with Yesayan’s allegations of abuse. We are not

persuaded. The son's testimony concerned events on May 5, 2020, and Yesayan testified that Mkhsyan hit her on the head on May 1, 2020. Given this testimony, we are not left with the firm conviction that the district court made a mistake when it found that the parties' oldest son did not witness any abuse on May 5, 2020.

Second, Mkhsyan argues that Yesayan's testimony is insufficient evidence to support issuing the OFP. In her testimony, Yesayan claimed that on May 1, 2020, she took the parties' infant child to a doctor's appointment and returned home later than expected because the appointment ran long. When she returned home that day, Mkhsyan was "very upset" because he needed the car to go to work. According to Yesayan's testimony, Mkhsyan said "really bad words to [her] and hit [her] on the head." Yesayan further testified that she was holding their baby when Mkhsyan hit her on the head. This made her feel "very afraid." Mkhsyan argues that the testimony is not sufficient to establish that he inflicted bodily harm or the fear of bodily harm because there was no physical or corroborating evidence, and because Yesayan did not report the abuse to law enforcement when they went to the parties' home on May 6, 2020. There is no requirement that domestic abuse be corroborated by physical evidence or injury or that petitioners report incidents of abuse to the police. The district court determined that Yesayan testified credibly when she stated that she became "very afraid" after Mkhsyan hit her on the head while she was holding their infant child. We conclude that the district court did not abuse its discretion because given this testimony, granting the petition was not against logic.

We need not address either of Mkhsyan's remaining arguments. Mkhsyan challenges the district court's legal conclusions as "insufficient" and asserts that the district

court granted the petition based on testimony regarding allegations that were not mentioned in the petition. Mkhsyan does not identify what additional legal conclusions were necessary or direct us to any legal authority requiring additional conclusions. Likewise, Mkhsyan presents no argument why the outcome would have been different absent Yesayan's testimony that Mkhsyan hit her in January 2020 when she was pregnant and absent her general allegation that Mkhsyan abused her during their marriage. We decline to address these two arguments because Mkhsyan did not adequately brief the arguments and did not identify reversible error. *See State, Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address issue not adequately briefed); *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 237 N.W.2d 76, 78 (Minn. 1975) (stating that, to obtain relief on appeal, an appellant must show both error and prejudice resulting from that error); *Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [and] the burden of showing error rests upon the one who relies upon it.").

Affirmed.