

*This opinion is nonprecedential except as provided by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
A20-0992**

In the Matter of:

Marna Susan Sutphen, petitioner,
Appellant,

vs.

Jeffrey Carlyle Sutphen,
Respondent.

**Filed April 12, 2021
Affirmed
Jesson, Judge**

Hennepin County District Court
File No. 27-DA-FA-20-2265

Elisha C. Biel, Bruce Jones, Faegre Drinker Biddle & Reath LLP, Minneapolis, Minnesota
(for appellant)

Jeffrey C. Sutphen, Deephaven, Minnesota (pro se respondent)

Considered and decided by Worke, Presiding Judge; Reyes, Judge; and
Jesson, Judge.

NONPRECEDENTIAL OPINION

JESSON, Judge

After leaving Colorado to return home to Minnesota, appellant-daughter Marna Sutphen temporarily moved in with respondent-father Jeffrey Sutphen. One night after having dinner at daughter's sister's house—where daughter consumed several alcoholic

drinks—father and daughter got into an argument. Daughter had received a phone call from her ex-boyfriend in Colorado, but because father did not have long-distance calling available on his phone, father hung up before daughter could answer. A physical altercation ensued and both parties suffered minor injuries.

Daughter then petitioned for an order for protection (OFP) against her father, which the district court denied. Daughter now argues that the district court abused its discretion in denying her petition for an OFP and erred in its application of the relevant law. She further alleges that the district court erred in its evidentiary rulings. We affirm.

FACTS

Appellant-daughter Marna Sutphen needed a place to stay after returning to Minnesota from Colorado.¹ She moved in with respondent-father Jeffrey Sutphen, who offered to let her live with him until she could find her own accommodations. As part of their arrangement, daughter agreed to abide by father's rules, which included refraining from using father's landline.

A few months after daughter moved in, father and daughter went over to daughter's sister's house for dinner. Before dinner, daughter had consumed a beer with a friend and left sister a voice message in which she slurred her words and was difficult to understand. While at sister's home, daughter had four more alcoholic drinks. When sister asked daughter to stop drinking, daughter became angry and threatened sister. Both sister and father believed daughter was drunk during dinner.

¹ The following is a summary of the district court's findings of fact which are not disputed on appeal.

Upon returning home from dinner, father received a call on his landline. Father believed it was daughter's ex-boyfriend calling from Colorado. Because father did not have long-distance service, father hung up the phone before daughter could answer. Daughter became upset, but father reminded her that she was not allowed to use his landline. Father and daughter began to struggle over the phone, though the record is unclear as to who the predominant aggressor was. At some point, the police were called. When officers arrived, they separated the two for questioning and noted that both had visible, but minor injuries. While talking with officers, father admitted to striking daughter, but only in self-defense because she was attempting to kick him in the groin. As for daughter, both officers confirmed that she was "highly intoxicated" during their inquiry.

A few weeks later, daughter petitioned for an OFP against father, alleging that during their altercation he struck her in the face, shoved her against a wall, and prevented her from calling the police. The district court granted an ex parte OFP and at father's request held an evidentiary hearing on the matter.

During the hearing, father sought to introduce testimony from sister regarding daughter's level of intoxication at dinner. Daughter objected, arguing that because sister was not present during the altercation, her testimony was not relevant to whether domestic abuse had occurred. But the district court determined that sister's testimony was relevant for purposes of impeaching daughter's credibility and allowed sister to testify. Later, when daughter attempted to elicit testimony from the officers about statements she made to police that night regarding what happened, father objected on hearsay grounds. The district court sustained the objection and limited the scope of the officers' testimony accordingly.

Based on the testimony presented at the hearing, the district court found that although “It is clear there was an altercation between the parties and that both parties caused injury to the other,” it was not clear “which party [was] the predominant aggressor.” And the district court determined that there was “insufficient evidence to show that [daughter] is in reasonable fear of harm from [father], that the injuries she suffered were inflicted for reasons other than in self-defense, and that she is in need of a protective order.” The district court dismissed daughter’s petition.

Daughter appeals.

DECISION

Daughter challenges the district court’s dismissal of her petition for an OFP on three grounds. First, she argues that the district court abused its discretion by denying her petition because father’s actions qualify as domestic abuse which, she asserts, should have prompted the district court to grant her petition. Second, daughter claims that the district court erred by applying the incorrect legal standard to her petition. Finally, daughter alleges that the district court erroneously allowed sister to testify and excluded daughter’s statements to police.

I. The district court did not abuse its discretion by dismissing daughter’s petition for an order for protection.

Daughter first challenges the district court’s dismissal of her petition for an OFP by arguing that she should have been granted some form of relief because father’s actions met the definition of domestic abuse under the Minnesota Domestic Abuse Act. Minn. Stat. § 518B.01 (2020). While daughter concedes that the district court is not required to

grant relief under the domestic abuse act, she asserts that it is “antithetical” to its purpose to refuse her any relief in these circumstances. The only discretion the district court has under the domestic abuse act, daughter argues, is in determining the type of relief granted, not whether relief should be granted at all.

We review a district court’s decision to grant relief under the domestic abuse act for an abuse of discretion. *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). Domestic abuse is defined as physical harm, injury, or assault, or the infliction of fear of such harm by a family member. Minn. Stat. § 518B.01, subd. 2(a)-(b) (2020). If the district court finds that domestic abuse has occurred it “*may* provide relief” by granting an OFP. *Id.*, subd. 6(a) (2020) (emphasis added).

Both the language of the domestic abuse act and relevant caselaw support the district court’s conclusion that the decision to grant an OFP is discretionary, not mandatory. The domestic abuse act explicitly provides that “Upon notice and hearing, the court *may* provide relief.” *Id.* (emphasis added). “May” is permissive, not mandatory. Minn. Stat. § 645.44, subd. 15 (2020). Furthermore, courts have repeatedly recognized that “Whether to grant relief under the Domestic Abuse Act (Minn. Stat. ch. 518B) is *discretionary* with the district court.” *McIntosh*, 740 N.W.2d at 9 (emphasis added). *See Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (citing the permissive definition of “may” and stating that “Under the [domestic abuse act], OFPs are never granted automatically”); *see also Mechtel v. Mechtel*, 528 N.W.2d 916, 920 (Minn. App. 1995) (“The Domestic Abuse Act provides that the granting of relief is within the district court’s discretion.”).

While we are mindful of the consequences of granting no relief in instances of domestic abuse, there is no indication that the district court's decision on this matter was based on an erroneous view of the law, or against logic or the facts in this record. *Thompson*, 906 N.W.2d at 500; *Mechtel*, 528 N.W.2d at 920. In fact, despite daughter's arguments to the contrary, the district court did not find that domestic abuse occurred. Although there was an altercation, both parties caused minor injury to the other, father testified that he struck daughter in self-defense, and the district court found that daughter's credibility was "seriously challenged" given her level of intoxication that night. Regardless, our analysis of the district court's discretion in granting an OFP remains the same. The district court has broad discretion to deny an OFP and acted within that discretion in this instance. *McIntosh*, 740 N.W.2d at 9.

II. The district court did not err in its application of the domestic abuse act by considering the lack of a predominant aggressor, whether daughter had a reasonable fear of harm, and father's claim of self-defense.

Daughter next asserts that the district court erroneously interpreted the domestic abuse act by requiring daughter to prove that father was the aggressor in the altercation, daughter was afraid of being harmed by father, and father's striking of daughter was not done in self-defense. We review a district court's statutory interpretation de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

The domestic abuse act requires that the petitioner for an OFP prove by a preponderance of the evidence that he or she has been physically harmed, injured, or assaulted, or is in fear of such harms being inflicted upon them by a family or household member. Minn. Stat. § 518B.01, subd. 2(a)-(b); *Oberg v. Bradley*, 868 N.W.2d 62, 64

(Minn. App. 2015). To determine whether, using this definition, domestic abuse occurred, we have held that the district court may consider “the totality of the circumstances.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

Here, the district court considered the two primary elements of domestic abuse as identified by the domestic abuse act: whether father and daughter are related by blood, and whether father harmed, injured, or assaulted daughter or daughter feared that such harm would occur. But the district court also looked beyond those factors to consider daughter’s level of intoxication, father’s claim of self-defense, and the lack of clarity over who was the predominant aggressor. Because these factors were part of the *totality* of the circumstances, the district court could properly consider those facts when making its decision. *Id.* We conclude that the district court did not erroneously apply the domestic abuse act when it denied daughter’s petition for an OFP.

III. The district court did not err in admitting sister’s testimony and excluding daughter’s statements to police.

Finally, daughter assigns error to the district court’s evidentiary rulings allowing sister to testify about daughter’s level of intoxication and excluding daughter’s statements to police. Daughter argues that sister’s testimony was not relevant to the ultimate issue of whether domestic abuse occurred and that her excluded statements to police were not hearsay. These evidentiary errors, daughter asserts, were prejudicial to her claim.

The admissibility of evidence is within the district court’s discretion. *Aljubailah ex rel. A.M.J. v. James*, 903 N.W.2d 638, 644 (Minn. 2017). We will not disturb that decision unless it was based on an erroneous view of the law or was an abuse

of the district court's discretion. *Id.* The complaining party bears the burden of demonstrating that prejudice occurred because of the erroneous evidentiary ruling. *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017).

Relevance of Sister's Testimony

As a general rule, all relevant evidence is admissible. Minn. R. Evid. 402. Evidence is relevant if it has any tendency to make a fact of consequence more or less probable than it would be without that evidence. Minn. R. Evid. 401. The decision to admit or exclude evidence lies within the district court's discretion, which this court will not overturn without some indication that the decision was based on an erroneous view of the law or an abuse of the district court's discretion. *Aljubailah*, 903 N.W.2d at 644.

At the hearing, father sought to introduce sister's testimony about daughter's level of intoxication to impeach daughter's credibility. Because sister's testimony only concerned daughter's level of intoxication while she was at dinner, sister's testimony is not relevant to the ultimate issue of whether or not domestic abuse occurred. But because "witnesses may testify in the form of a generalized opinion about common matters they observed such as . . . intoxication . . . if helpful," sister's testimony is still admissible. Minn. R. Evid. 701, 2016 comm. cmt. As the district court noted, sister's perception of daughter's level of intoxication was helpful in determining whether daughter could accurately recall the events of that night. Thus, sister's testimony was relevant to impeach

daughter's credibility and the district court did not abuse its discretion in admitting the testimony.²

Hearsay Ruling

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Minn. R. Evid. 801(c). Generally, hearsay is inadmissible. Minn. R. Evid. 802. But where, as here, the evidence being offered is a prior statement by a witness, the statement is not considered hearsay and may be admitted. Minn. R. Evid. 801(d)(1)(B). But even if we assume—without deciding—that exclusion of the statement was error, we turn to review whether the exclusion of daughter's statements resulted in prejudice. *Olson*, 892 N.W.2d at 841. An evidentiary error is prejudicial if it might have influenced the fact-finder and changed the result of the proceeding. *Id.* at 842.

Daughter argues that her statements to the police could have changed the outcome of the proceedings because her statements included her “perception of events immediately after they occurred.” She claims that the statements would have corroborated her testimony at the hearing and could have rehabilitated her credibility. We disagree. Ample evidence supported the district court's decision, including daughter's contradictory testimony, statements by father, sister, and the police officers that daughter was “highly intoxicated” on the night of the altercation, and the voice message daughter left for sister. Furthermore, we note that daughter's statement to police was made by daughter *while* she was “highly

² Because we conclude that the district court did not abuse its discretion, we need not reach daughter's argument that the district court's decision resulted in prejudice.

intoxicated.” Accordingly, even if the district court erred in excluding daughter’s statements to police, she was not prejudiced.

In summary, we recognize the challenges this case presents. An altercation between father and daughter occurred, and both parties suffered injuries as a result. But we conclude that the district court acted well within its discretion in denying the OFP and discern no error in its consideration of the totality of the circumstances in reaching its decision, or in the admission of sister’s testimony for impeachment purposes and the exclusion of daughter’s statements to police.

Affirmed.