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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1423**

In the Matter of:

Michelle Antionette Frison, and OBO minor child,
Respondent,

vs.

Ermias Mesfin Asfaw,
Appellant.

**Filed June 1, 2021
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-DA-FA-20-699

Brittney M. Miller, Susan C. Rhode, Moss & Barnett, Minneapolis, Minnesota (for respondent)

Thomas A. Sieben, Sieben & Cotter, PLLC, South St. Paul, Minnesota (for appellant)

Considered and decided by Gäitas, Presiding Judge; Larkin, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges the district court's issuance of an order for protection (OFP) against him in favor of his infant child. He argues that (1) the district court abused its

discretion by admitting certain testimony regarding the nature of the infant's injuries, and (2) the record is insufficient to support the issuance of the OFP. We affirm.

FACTS

Appellant Ermiase Mesfin Asfaw and respondent Michelle Antionette Frison had a romantic relationship that lasted for approximately two-and-a-half years. The two never married but had an infant child together, born in 2020. When the infant was just over two months old, Asfaw drove Frison to a doctor's appointment while Frison's mother watched the infant. When Frison returned home, she noticed that the infant's leg was swollen. She called the infant's primary-care physician. At that time, she believed the infant's swollen leg might have been a reaction to immunization shots he received ten days earlier. Later that day, she brought the infant to the hospital.

While at the hospital, the infant had x-rays taken, and Frison learned from a doctor that the infant had multiple broken bones. The infant received immediate care at United Hospital and was then transferred to Children's Hospital. The infant left the hospital in a cast. Doctors prescribed pain medication and two anti-seizure medications to the infant. Frison observed that the infant was in pain while he was in the cast. The infant required careful handling even after getting out of the cast, and his injuries made traveling difficult for him.

The following day, Ramsey County placed the infant child in the emergency custody of the county and began an investigation. Police arrested Asfaw—but not Frison or the infant's grandmother—and the state criminally charged him in connection with the infant's injuries. As part of that criminal proceeding, a domestic-abuse no-contact order (DANCO)

prevented Asfaw from having contact with the infant. In addition to the criminal charges, the county initiated a child protection case against Asfaw.

In July 2020, Frison filed a petition for an OFP in district court against Asfaw seeking protection for both herself and the infant child. A referee for the district court issued an emergency ex parte OFP. Asfaw timely requested a hearing. In September 2020, the district court held a hearing.

At the hearing, Frison testified regarding the infant's injuries and condition. Asfaw objected to a portion of her testimony on the grounds that the testimony lacked foundation and constituted inadmissible hearsay. Frison testified that she believed that Asfaw caused the infant's injuries, and she believed that the infant would be in danger if left in his care. In addition to her testimony about the infant, Frison also testified about an incident in which Asfaw attempted to force her to have sex with him. She provided this testimony to explain why she sought an OFP in favor of herself in addition to an OFP in favor of the infant.

On cross-examination, Frison admitted that the only people present in the house on the night before the hospital visit were herself, her mother, Asfaw, and the infant. Frison also admitted that only her mother was alone with the infant on the morning of June 25. Frison testified that she did not recall any particular difficulty getting the infant to bed on the night of June 24, and that she did not notice him being fussy or having any problems with his leg that night. She also admitted that when she was interviewed by police the day after bringing the infant to the hospital, she stated that she did not believe that Asfaw was the source of the infant's injuries.

On redirect examination, Frison testified that, while she did not originally believe that Asfaw caused the infant's injuries, she had changed her mind and now believed that Asfaw hurt the infant. Frison testified that she changed her mind based on the criminal and child protection proceedings against Asfaw. Frison rested after she testified. Asfaw rested without calling any witnesses.

During closing arguments, Frison's attorney argued that Frison had established that Asfaw had committed acts of domestic abuse against Frison and the infant. Frison's attorney emphasized that Asfaw did not deny attempting to assault her or inflicting injuries on the infant. Asfaw's attorney conceded that Frison had met her burden for an OFP in favor of herself. But he argued that Frison had not met her burden with respect to the infant because the criminal and child protection proceedings involving Asfaw were insufficient to establish that Asfaw caused some type of physical injury to the infant. Asfaw's attorney renewed his objections to portions of Frison's testimony and argued that without that testimony, Frison had not met her burden because there was no allegation that Asfaw committed any act that injured the infant.

After hearing closing arguments, the district court orally granted the OFP in favor of both Frison and the infant child. The district court acknowledged that the question was "a little more difficult" with respect to the infant but concluded that the evidence supported issuance of an OFP in favor of the infant child as well as Frison. In reaching this conclusion, the district court recognized that Frison's testimony regarding the infant's "specific medical condition" lacked foundation. But the district court concluded that the

remaining evidence was sufficient to support issuance of the OFP. The district court reasoned:

[H]ere's what is not disputed, that baby went into the hospital and came out in some pretty significant casts . . . with pain medication, with difficulty in even taking a car ride. That [Frison] was investigated, not arrested, no Child Protection case against her. The other . . . person who was caring for [the infant] that evening has not been arrested, does not have a Child Protection case. The only other adult in that home, [Asfaw] was arrested, does have a Child Protection case. . . . So while it is a more difficult case I find [Frison] to be a credible witness, I find her testimony to be credible, her petition to be credible.

The district court subsequently issued a written order granting the requested OFPs in favor of Frison and the infant.

Asfaw appeals the order issuing the OFP but only with regard to the infant child.

DECISION

The Minnesota Domestic Abuse Act allows a person alleging domestic abuse to file a petition for an OFP. Minn. Stat. § 518B.01, subd. 4 (2020). “Domestic abuse” includes “the infliction of fear of imminent physical harm, bodily injury, or assault” against a family or household member. *Id.*, subd. 2(a) (2020). The petitioner bears the burden of demonstrating that domestic abuse occurred by a preponderance of the evidence. *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). If the petitioner demonstrates that domestic abuse occurred, the district court “may” issue an OFP and provide certain forms of relief, such as “restrain[ing] the abusing party from committing acts of domestic abuse” and “order[ing] the abusing party to have no contact with the petitioner.” Minn. Stat. § 518B.01, subd. 6(1), (10) (2020).

We review a district court's decision to grant an OFP for an abuse of discretion. *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). A district court abuses its discretion "if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law." *In re Adoption of T.A.M.*, 791 N.W.2d 573, 578 (Minn. App. 2010) (quotation and citations omitted). In conducting such a review, this court gives "deference to the opportunity of the [district] court to assess the credibility of the witnesses." *Thompson*, 906 N.W.2d at 500-01 (quotation omitted).

Asfaw argues that the district court abused its discretion by issuing the OFP because, in his view, the record does not support the district court's finding that domestic abuse occurred. He first argues that the district court received inadmissible evidence. He then argues that, with or without the inadmissible evidence, the record does not support the district court's decision to issue the OFP. We address each argument in turn.

I. Asfaw has not demonstrated prejudice from the district court's evidentiary ruling.

Asfaw argues that the district court abused its discretion by allowing Frison to testify, over his objection, to the infant's medical condition as reported to Frison by the infant's doctor.¹ Frison contends that the evidence was properly admitted. She further argues that any alleged error regarding the admission of the evidence was not prejudicial.

¹ Asfaw also argues that "[t]he district court clearly erred in its factual findings," but he does not identify any specific findings of fact by the district court that he characterizes as clearly erroneous. Accordingly, we review only his claim that the district court abused its discretion by allowing Frison to testify about the child's specific injuries.

“The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion.” *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017) (quotation omitted). A district court abuses its discretion “if it acts against logic and the facts on record, or if it enters fact findings that are unsupported by the record, or if it misapplies the law.” *T.A.M.*, 791 N.W.2d at 578 (quotation and citations omitted). Because an OFP is a civil remedy, Asfaw must demonstrate a prejudicial error to be entitled to a new hearing based on an erroneous evidentiary ruling. *Olson*, 892 N.W.2d at 841.

Asfaw argues that the district court abused its discretion by allowing Frison to testify to her understanding that her son had two broken legs, all of his toes were broken, and he sustained multiple skull fractures. Asfaw contends that this testimony was inadmissible because (1) Frison lacked foundation to provide such testimony because she is not a medical expert, and (2) the evidence was hearsay, conveyed to her by a medical doctor, not falling within any recognized exception.

We need not decide whether the district court abused its discretion by admitting the challenged testimony because Asfaw has not demonstrated any resulting prejudice. When explaining the basis for its decision to issue the OFP with regard to the infant child, the district court expressly addressed Asfaw’s concern about the challenged testimony. The district court noted: Asfaw “does have a point that [Frison] does lack the foundation to speak to [the infant’s] specific medical condition.” As a result, the district court did not rely on that testimony when it found the infant was injured. Instead, the district court relied

on the following undisputed evidence of physical injury to the infant: “th[e] baby went into the hospital and came out in some pretty significant casts, . . . with pain medication, with difficulty in even taking a car ride.” Because the district court did not rely on the testimony that Asfaw argues was erroneously admitted, we discern no prejudice resulting from the district court’s decision to admit the testimony. And, absent prejudice to Asfaw, the admission of the challenged testimony provides no basis for reversal. See *W.G.O. ex rel. A.W.O. v. Crandall*, 640 N.W.2d 344, 349 (Minn. 2002) (noting that erroneous admission of evidence that is cumulative of other admissible evidence is “harmless”); Minn. R. Civ. P. 61 (requiring harmless error to be ignored).

II. The district court did not abuse its discretion by issuing the OFP.

Asfaw next argues that the district court abused its discretion by issuing the OFP because there is insufficient evidence to demonstrate that he committed an act of domestic abuse against the infant child. Frison contends that the record supports the district court’s issuance of the OFP based on its determination that the infant child sustained some sort of physical injury caused by Asfaw. We agree with Frison.

As noted above, we review a district court’s decision to grant an OFP for an abuse of discretion. *Thompson*, 906 N.W.2d at 500. In doing so, we defer to the district court’s opportunity “to assess the credibility of the witnesses.” *Id.* at 500-01.

In determining whether domestic abuse occurred, the district court considered whether the infant had sustained a physical injury. As discussed above, the district court specifically found that the undisputed evidence showed that the infant child left the hospital “in some pretty significant casts,” with pain medication, and with difficulty riding in the

car. Based on these facts, the district court found that the child had a “physical injury.” The record supports the district court’s findings. At the hearing, Frison testified that she took her son to the hospital because she observed that one of his legs was swollen. She further testified that her son left the hospital in a cast and that he was in a lot of pain while in the cast. By the time of the hearing, she still had to be gentle with her son’s “legs . . . because they [were] still healing.” And, while not referenced by the district court, she also testified that the infant takes two medications to avoid having seizures, a condition that did not exist prior to the infant child’s admission into the hospital. Thus, even without the challenged testimony, there is sufficient evidence to support the district court’s finding that the infant sustained a physical injury.

Asfaw also argues the record does not support the district court’s determination that he caused the physical injury to the infant. Specifically, Asfaw contends that the record does not support the district court’s determination because Frison did not identify a particular incident where Asfaw abused the infant. Asfaw cites *Aljubailah ex rel. A.M.J. v. James* to support his argument that the district court abused its discretion by issuing the OFP without finding a particular instance of domestic abuse. 903 N.W.2d 638 (Minn. App. 2017). Although the OFP at issue in *Aljubailah* was based upon an identified incident of domestic abuse against a child, that decision does not condition a district court’s issuance of an OFP on the finding of a specific instance of domestic abuse. *Id.* at 643-44. Asfaw cites, and we are aware of, no case law that imposes such a requirement. Therefore, we conclude that the district court properly based its finding of domestic abuse on the totality of the circumstances. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99-100 (Minn.

App. 2009) (reviewing totality of the circumstances to determine whether the record supported the district court's issuance of an OFP).

Asfaw further argues that the totality of the circumstances do not establish that he caused the infant child's physical injury. He maintains the injury to the infant could have been the result of an accident. We are not persuaded.

In reaching its decision to issue the OFP, the district court carefully considered the question of causation. The district court explained that the evidence showed that only three people were caring for the infant during the relevant time frame: Frison, her mother, and Asfaw. The district court also found that the evidence showed that Asfaw was the only one of the three who was arrested as a result of the infant's physical injury. Asfaw also had an open child-protection case at the time of the OFP hearing. And, at the hearing, Frison testified that she believed that Asfaw caused the infant's injuries and was concerned for the infant's well-being if Asfaw were allowed to have contact with the infant. Based on this evidence, the district court found that Asfaw caused "physical injury" to the infant child and thereby engaged in "domestic abuse" against the infant. *See* Minn. Stat. § 518B.01, subd. 2(a)(1) (defining "domestic abuse" to include physical harm and bodily injury committed against a family or household member by a family or household member).

The district court, in reaching this conclusion, expressly found Frison to be credible. We defer to "the opportunity of the [district] court to assess the credibility of the witnesses." *Thompson*, 906 N.W.2d at 500-01. Asfaw has not shown that the district court abused its discretion by concluding that he physically injured the child, based on Frison's

testimony. *See Hughs ex rel. Praul v. Cole*, 572 N.W.2d 747, 752 (Minn. App. 1997) (holding that while the evidence of domestic abuse submitted to the district court was “minimal,” the district court did not abuse its discretion in issuing the OFP because appellant “failed to submit any evidence to rebut the[] allegations”). Asfaw’s contention that the infant child’s physical injury could have been caused by an accident is not supported by any evidence in the record. We discern no basis for concluding that the district court abused its discretion when it found that the evidence was sufficient to support the issuance of an OFP against Asfaw with regard to the infant.

In sum, Asfaw has not shown a basis for reversal of the district court’s order granting the OFP.

Affirmed.