

*This opinion is nonprecedential except as provided by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
A21-0266**

In the Matter of:
Heather Lorraine Drinkwater, and obo minor child,
Respondent,

vs.

Michael Guy Drinkwater,
Appellant.

**Filed December 6, 2021
Affirmed
Johnson, Judge**

St. Louis County District Court
File No. 69DU-FA-20-843

Heather Drinkwater, Duluth, Minnesota (*pro se* respondent)

Bill L. Thompson, Duluth, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Heather Lorraine Drinkwater petitioned the district court for an order for protection against her husband, Michael Guy Drinkwater. The district court granted the petition and issued an order for protection. We conclude that the district court's finding of domestic abuse is supported by the evidence. Therefore, we affirm.

FACTS

The parties were married in 2010. They have one minor child. They separated in 2016.

In December 2020, Heather petitioned the district court for an order for protection (OFP) on behalf of herself and the minor child. The district court issued a temporary *ex parte* OFP and scheduled an evidentiary hearing, which occurred in January 2021. At the time of the hearing, a dissolution proceeding also was pending. The district court consolidated the evidentiary hearing in this case with a hearing on a motion concerning custody and parenting time in the dissolution case. Michael was represented by an attorney; Heather represented herself.

At the hearing, Heather testified that in 2016, Michael punched her in the stomach so hard that she fell backward and hit her head on a dresser, which caused her to bleed. She also testified that Michael had threatened her. Specifically, she testified that Michael told her that if he saw her “on a corner,” she had “better watch out.” Heather also testified that, in the span of a few months, Michael had shown up at her home, uninvited, more than 25 times, often leaving notes under her door or on her car. On one recent visit, Heather called police because Michael knocked on the door and “nudged” his way into her living room. Heather also testified that she fears Michael because he owns handguns.

Michael testified that, during the 2016 incident, he acted in self-defense. He denied threatening Heather in the way she had described in her testimony. He testified that he left notes at Heather’s apartment because Heather had otherwise prevented him from communicating with their child and it was the only way for him to do so.

At the conclusion of the hearing, the district court made an oral finding that Michael had engaged in domestic abuse. The district court stated that Heather's testimony was "completely credible" with respect to the 2016 incident. The district court also found that, "in the context of" the prior incident and Michael's unwelcome visits and entry into Heather's home, Michael had caused Heather to fear him. Accordingly, the district court issued an OFP that prohibits Michael from having contact with Heather. The OFP does not prohibit contact between Michael and the minor child. Michael appeals.

DECISION

Michael argues that the district court erred by issuing the OFP on the ground that the evidence is insufficient to support the district court's findings of fact. Heather has not filed a responsive brief. Nonetheless, the appeal "shall be determined on the merits." Minn. R. Civ. App. P. 142.03.

The Minnesota Domestic Abuse Act authorizes a district court to issue an OFP to protect victims of domestic abuse. *See generally* Minn. Stat. § 518B.01 (2020). To obtain an OFP, a petitioner must prove by a preponderance of the evidence that the respondent has committed domestic abuse "against a family or household member." *Id.*, subd. 2(a); *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). The term "domestic abuse" is defined by statute to mean "(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats . . . , criminal sexual conduct . . . , or interference with an emergency call." *Id.*, subd. 2(a).

This court applies an abuse-of-discretion standard of review to a district court's issuance of an OFP. *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018);

Pechovnik v. Pechovnik, 765 N.W.2d 94, 98 (Minn. App. 2009). A district court abuses its discretion if it issues an OFP without sufficient evidence to support the district court's findings. *Pechovnik*, 765 N.W.2d at 98. An OFP may be reversed for insufficient evidence only if the district court's findings are "clearly erroneous or 'manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.'" *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (quoting *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999)). In reviewing a district court's findings of fact for clear error, we do not attempt to "reconcile conflicting evidence" or "decide issues of witness credibility." *Id.* (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)).

In this case, the district court found that Michael committed two forms of domestic abuse. First, the district court found that Michael punched Heather in the stomach, which is a physical assault. *See* Minn. Stat. § 518B.01, subd. 2(a)(1). Second, the district court found that Michael inflicted on Heather fear of imminent physical harm, bodily injury, or assault by making a verbal threat and by forcibly entering Heather's home. *See id.*, subd. 2(a)(2).

Michael's argument has two parts, which correspond to the district court's two bases for finding domestic abuse. First, Michael contends that his physical assault of Heather is not recent enough to warrant the issuance of an OFP because it occurred in 2016. He cites *Kass v. Kass*, 355 N.W.2d 335 (Minn. App. 1984), in which this court reasoned that a physical assault occurring four years earlier was "in the past" and could not contribute to a finding of a "present intention to do harm or inflict fear of harm." *Id.* at 337. But that part of the *Kass* opinion was expressly overruled by the supreme court in *Thompson*. 906

N.W.2d at 500. In *Thompson*, the supreme court stated, “The plain language of subdivision 2(a)(1) does not require that the ‘physical harm, bodily injury, or assault’ has occurred within a specified time before the petition is filed or be imminent.” *Id.* at 499. Rather, the act “simply requires that ‘physical harm, bodily injury, or assault’ has occurred at some point.” *Id.* The supreme court added, “It would be inappropriate for us to read a temporal requirement, or the word ‘imminent,’ into a statutory definition when no such requirement appears in the text.” *Id.* In light of *Thompson*, the district court did not err by relying on evidence of the 2016 incident in finding that Michael engaged in domestic abuse by a physical assault.

Second, Michael contends that, for various reasons, the evidence does not support the district court’s finding that he caused Heather to fear him. He asserts that the 2016 incident is too distant in time to create an imminent fear of harm. But this court has reasoned that incidents of domestic abuse occurring more than ten years earlier may contribute to an inference that a person intends to inflict fear of imminent harm. *See Pechovnik*, 765 N.W.2d at 96, 99-100. With respect to the district court’s finding of a recent verbal threat, Michael contends that Heather testified that she did not know what he meant. But Heather testified clearly that Michael’s statement was a threat; she said she was uncertain merely about the means by which he might hurt her. Michael omits any mention of the district court’s finding that he forced his way into Heather’s home, which also caused her fear. In short, the district court’s finding that Michael inflicted fear in Heather of imminent harm is supported by the evidence.

Thus, the district court did not err by granting Heather's petition and issuing an OFP.

Affirmed.