

*This opinion is nonprecedential except as provided by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
A21-1011**

In re the Matter of:
Katie Lynne Spooner, on behalf of the minor children, petitioner,
Respondent,

vs.

Jesse Dean Warden,
Appellant.

**Filed May 9, 2022
Affirmed
Segal, Chief Judge**

Chisago County District Court
File No. 13-FA-21-195

Spencer T. White, Spencer T. White, PLLC, Eagan, Minnesota (for respondent)

Beau D. McGraw, McGraw Law Firm, P.A., Lake Elmo, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Bratvold, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

On appeal from the district court's grant of an order for protection (OFP), appellant argues that the record does not support the district court's findings and that the district court erred because it allowed and considered inadmissible hearsay evidence. We affirm.

FACTS

Appellant-father Jesse Dean Warden and respondent-mother Katie Lynne Spooner were married from July 2008 until February 2017. The parties have two minor daughters for whom they share joint custody. On July 6, 2021, mother petitioned for an OFP on behalf of the children to prohibit father from committing acts of domestic abuse and from contacting the children.¹ The district court issued an ex parte OFP and scheduled a hearing on the petition.

Mother and father were the only people to testify at the hearing. Mother provided testimony about three specific incidents. First, mother testified that R.P., father's significant other at the time, told mother in a January 2021 phone call that father had hit R.P. Neither mother nor the children were present or witnessed this alleged assault.

Mother testified that the second incident occurred in April 2021 during a video call from the children to mother. The children called mother from the yard outside father's house. Mother said that the older daughter told mother that father was drunk and fighting with R.P., and that the daughter was scared and wanted to go back to mother's house. While mother was on the video call, father came outside and told the older daughter to get off the phone. Mother testified that she could see during the video call that father grabbed the older daughter, causing the daughter to drop the phone. Mother explained that the phone landed on the ground face up, allowing mother to be able to continue to observe the

¹ Mother also sought in the petition to have father undergo a chemical-dependency assessment and a mental-health evaluation. The district court did not grant this request in the OFP and the denial is not before us in this appeal.

incident. Mother said that she told father, via the phone, to let the daughter go; R.P. then intervened and told mother that the daughter was scared. Mother testified that she then went to father's house and picked up the children.

The third incident occurred in July 2021. Mother testified that she received a phone call from the children while they were at father's house. According to mother, the children were in R.P.'s vehicle with the doors locked. The children had the phone on speaker; the younger daughter said that father was acting weird and scary. The older daughter, according to mother's testimony, said that father became angry after the daughter told father that he was acting weird, and that he then threw items and punched a hole in the wall. Mother testified that she asked the older daughter to call 911, but the older daughter responded that R.P. had begged her not to because R.P. felt bad for father. Mother also testified that the children were scared when they returned to her house that night.

Father denied that he hit R.P. in January 2021. With respect to the April 2021 incident, father stated that he and R.P. got into a disagreement and he "got loud" and slammed several doors in the house. He claimed that this scared the older daughter because she is sensitive to loud noises, and that the younger daughter then got scared because her sister was scared. Father denied grabbing the older daughter in an aggressive way; he testified that he was merely trying to get the daughter's attention to find out why she was "freaking out" and that the phone fell while he was trying to get her attention. Finally, father denied punching a hole in the wall or throwing things during the July 2021 incident, but he acknowledged that he was "being loud" and "raising [his] voice."

The district court also received five exhibits into evidence by stipulation of the parties, including text messages between the older daughter and father, and text messages between mother and R.P.

Following the hearing, the district court issued an OFP. The district court, citing the April and July 2021 incidents, determined that acts of domestic abuse had occurred. The OFP prohibits father from committing acts of domestic abuse against the children. The district court did not grant mother's request that father be prohibited from contact with the children. Father appeals.

DECISION

Father argues that the evidence is not sufficient to support the grant of an OFP because mother's testimony was biased and because the OFP was based on inadmissible hearsay testimony. We conclude, however, that even setting aside the allegedly inadmissible hearsay evidence, the evidence is sufficient to support the district court's grant of the OFP.

"We review the district court's decision to grant 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 its [factual] findings are unsupported by the record or if it misapplies the law." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quotation omitted); see *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022). We view the record in the light most favorable to the findings and will reverse a finding of fact "only if we are left with the definite and firm conviction that a mistake has been made." *Braend ex rel. Minor Child. v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006) (quotation omitted). We also

will not make credibility determinations or reconcile conflicting evidence on appeal. *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017).

The Minnesota Domestic Abuse Act provides that a district court may issue an OFP upon a finding of domestic abuse. Minn. Stat. § 518B.01, subds. 4, 6(a) (2020). “[D]omestic abuse” includes “physical harm, bodily injury, or assault,” as well as “the infliction of fear of imminent physical harm, bodily injury, or assault” when it is “committed against a family or household member by a family or household member.” *Id.*, subd. 2(a)(1)-(2) (2020). An OFP petitioner has the burden of proving that domestic abuse occurred. *Oberg ex. rel Minor Child v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). “[O]nce ‘domestic abuse’ has been established, the district court 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).

Here, the district court found that mother testified “credibly” and provided “stipulated exhibits corroborating the fact that [father] inflicted the fear of imminent physical harm, bodily injury, or assault on the Parties’ minor children on two separate occasions.” The “two separate occasions” referenced by the district court were the April and July 2021 incidents. The district court found that during the April 2021 incident father “was agitated and grabbed [the older daughter] from behind, surprising her, scaring her, and causing her to drop her phone onto the ground.” As to the July 2021 incident, the district court found that father “threw items around his house, screamed obscenities at his children, and punched a hole in his wall in the presence of both [children], thereby causing them to suffer fear of the infliction of imminent physical harm, bodily injury, and assault.”

The district court determined that these two incidents constituted domestic abuse within the meaning of the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01, subd. 2(a) (2020).

Father argues that mother's claims "were baseless" and that the district court "should have looked beyond [mother's] unfounded claims" because she "is an aggrieved ex-spouse." This argument, however, is essentially nothing more than a challenge to the district court's determination that mother testified credibly. As an appellate court we are not at liberty to make our own credibility determinations; such determinations are "exclusively the province of the factfinder." *Pechovnik*, 765 N.W.2d at 99 (quotation omitted). We therefore defer to the district court's determination that mother's testimony was credible.

We turn next to father's hearsay argument. Father challenges the admission of mother's testimony about the three alleged incidents, including the allegation that R.P. told mother in January 2021 that father hit R.P. We note first that the district court did not make any findings, or otherwise reference in the OFP, mother's testimony that R.P. told mother she was hit by father in January 2021. It thus appears that the testimony did not impact the outcome and we have excluded this testimony from consideration in our analysis of the sufficiency of the evidence.

Second, we conclude that the record supports the district court's findings about the April and July 2021 incidents without the challenged testimony. For example, the district court's finding that the April 2021 incident involved domestic abuse is supported by mother's firsthand observations made during the video call with the older daughter.

Mother testified that she was able to observe father grab the daughter, causing the daughter to drop the phone. In addition, father himself admitted that he and R.P. got into a disagreement that night, that he “got loud,” that the children were afraid during the incident, and that the older daughter was “freaking out” while she was on the video call with her mother. Finally, father stipulated to the admission of text messages.² The messages include an exchange between mother and R.P. during and after the April 2021 incident. In those text messages, R.P. stated that the older daughter was scared and that “[i]t was best for the girls to go home with [mother].”

As to the July 2021 incident, the district court’s findings that father “threw items around his house, screamed obscenities around and at his children, and punched a hole in his wall in the presence of both [children],” are based on statements made by the older daughter to mother in a phone call. The older daughter called mother when both children were outside father’s home, locked in R.P.’s car. Mother testified that the call was on speaker and that her younger daughter told her that father “had another blackout” and “was acting really weird and scary.” Mother further testified that the older daughter stated that she had told “her dad that he was being weird and that triggered something where he threw items and then also punched a hole in the wall.” While this is hearsay testimony, father made no objection to the testimony.

² We note that some of these text messages contain hearsay statements, but father stipulated to the admission of the text messages and on appeal only challenges their evidentiary weight.

Even without this testimony concerning the specifics of father's conduct, however, the district court's finding that father's conduct was such that it caused the children to fear harm is supported by the record. For example, father admitted that he was "being loud," "raising [his] voice," and that the children "were scared" during the July 2021 incident. And the stipulated text messages include a text string between the older daughter and father the day after the incident in which the daughter stated she did not want to go back to father's house and, when he asked why, she responded, "Because you were really scary." Father texted in response that he was "sorry . . . for scaring [her]." Father argues that it is "unclear" from the text messages whether he "was apologizing to [the older daughter] for acting violently like [mother] claims." But while these text messages do not establish precisely what occurred, they corroborate mother's assertion that father's behavior caused significant fear in the children.

Mother also testified that R.P. brought the children back to mother's house right after the incident and that, based on mother's personal observations, the children were visibly scared. *See* Minn. R. Evid. 701 (allowing certain non-expert opinions that are "rationally based on the perception of the witness").

Finally, the stipulated text messages include a text message from mother to R.P. thanking R.P. for bringing the children to mother's house and acknowledging that the night "was difficult," to which R.P. responded, "Thank you. I wish things were different for all of us."

Thus, even setting aside the allegedly inadmissible evidence, the record supports the district court's findings of domestic abuse. The district court's determination that father

engaged in acts of domestic abuse during the April and July 2021 incidents is supported by the firsthand testimony of mother, the admissions of father, and the stipulated text messages. We conclude, therefore, that the district court did not abuse its discretion in granting the OFP.

Affirmed.