

*This opinion is nonprecedential except as provided by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
A21-1526**

In the Matter of:

Gabrielle Elizabeth Shanley, and on behalf of minor child,
Respondent,

vs.

Justin James Osgood,
Appellant.

**Filed June 20, 2022
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-FA-21-5499

Xavier J. Martine, Martine Law, PLLC, Minneapolis, Minnesota (for respondent)

John G. Westrick, Savage Westrick, P.L.L.P., Bloomington, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Smith, Tracy M., Judge; and
Hooten, Judge.*

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this challenge to an order for protection (OFP) issued against him for the protection of his minor child, appellant argues that the district court erred (1) by admitting

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

evidence of prior domestic conduct against the child's mother as relationship evidence under Minn. Stat. § 634.20 (2020) and (2) by granting the OFP based on findings that he contends are not supported by the record. Because any evidentiary error was not prejudicial and because the factual findings are supported by the record, we affirm.

FACTS

Appellant Justin Osgood and respondent Gabrielle Shanley are parents who share joint custody of a minor child who was born in 2017. Around 11:00 a.m. on July 30, 2021, at an appointment for the child, Shanley and Osgood exchanged the child for Osgood to begin his parenting time. It is undisputed that the child had no injuries at that time. Osgood cared for the child for a few hours before heading to work in the early afternoon.

Osgood lived in a house with his father and mother. Osgood's father testified that he (that is, Osgood's father) arrived home from work around 6:00 p.m. on July 30 and that the child had no injuries at that time. Osgood's then-girlfriend, J.P., testified that she arrived at the Osgood home around 7:00 p.m. and that the child had no injuries. Around 8:00 p.m., Osgood's father and mother left the home to go for a drink. J.P. cared for the child while they were gone and put the child to bed around 8:30 p.m. Around 9:00 p.m., Osgood's father and mother returned to the house. Osgood's father testified that he did not see the child until the next morning.

Around 2:00 a.m. on July 31, Osgood arrived home from work. He testified that he had a slice of pizza and discovered J.P. in the living room complaining of chest pain. Osgood testified that he took J.P. to the hospital around 2:30 a.m. and that he remained with her there until later that morning.

Osgood's father testified that he discovered bruising on the child's face on the morning of July 31. He texted Osgood at 8:30 a.m., asking, "What the hell happened to her face she did not look like that when we went out last night." He sent a photo of the child, which showed the bruising. Osgood responded, "I don't know. I got home and left." Osgood's father responded, "Sure looks like she got hit really hard," and sent another photo of the bruising, and Osgood texted back, "It does look that way."

The following morning, Osgood texted Shanley, saying, "[The child] has marks on her face. No idea why. Possibly a doorknob." That afternoon, Shanley picked the child up at the exchange. She took the child to an emergency room, and the bruising was photographed and documented. Osgood's father later testified that the child was not tall enough to run into a doorknob.

Shanley petitioned for an OFP against Osgood on behalf of the child. The district court granted an ex parte OFP, and the matter was scheduled for an evidentiary hearing. Before the hearing, Osgood moved to exclude, as inadmissible character evidence, testimony that Osgood had committed domestic abuse against Shanley. The district court denied the motion, concluding that evidence of past incidents of domestic abuse by Osgood against Shanley was admissible under Minn. Stat. § 634.20.

At the hearing, Shanley testified that, on their second date, Osgood had sexually assaulted her while she was intoxicated, which resulted in the conception of the child. She further testified that Osgood repeatedly physically and sexually assaulted her during the remainder of their relationship, including at times when the child was present in the room.

Both Shanley and her father testified that, prior to the incident with the bruising, the child had returned from parenting time with Osgood with scratches on her face.

The district court granted the OFP, finding the testimony by Shanley and her father credible and the testimony by Osgood, J.P., and Osgood's father not credible.

Osgood appeals.

DECISION

A person who alleges domestic abuse may petition for an OFP under Minn. Stat. § 518B.01, subd. 4. (2020). Domestic abuse includes “physical harm, bodily injury, or assault,” when “committed against a family or household member by a family or household member.” Minn. Stat. § 518.01, subd. 2(a) (2020). The petitioner must show that domestic abuse occurred by a preponderance of the evidence. *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 v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). “[Appellate courts] review the decision to grant an OFP for an abuse of discretion. A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quotation and citation omitted).

Osgood argues that the district court abused its discretion. He first contends that the district court received inadmissible evidence. He then asserts that the evidence was too speculative for the district court to find that he injured the child. We address each argument in turn.

I. Any error by the district court in admitting evidence of prior domestic conduct was harmless.

Osgood argues that the district court abused its discretion by allowing Shanley to testify about domestic abuse committed against her by Osgood. Shanley contends that the evidence was properly admitted as relationship evidence under Minn. Stat. § 634.20 and that any error from the admission of the evidence was not prejudicial.

“Rulings [in domestic-abuse proceedings] on the admissibility of evidence lie within the district court’s discretion, and this court will not disturb an evidentiary ruling unless it is based on an erroneous view of the law or is an abuse of that discretion.” *Aljubailah v. James*, 903 N.W.2d 638, 644 (Minn. App. 2017). “An OFP is a civil remedy[,]” and, “[i]n civil cases, the complaining party must demonstrate prejudicial error to be entitled to a new trial or hearing based on an erroneous evidentiary ruling.” *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017) (quotation omitted). “An evidentiary error is prejudicial if it might reasonably have influenced the fact-finder and changed the result of the proceeding.” *Id.* at 842.

Osgood argues that the district court abused its discretion by admitting the domestic-conduct evidence because Minn. Stat. § 634.20 applies only in criminal cases and this is a civil case. But we need not decide whether section 634.20 applies in the context of a petition for an order for protection if Osgood has not demonstrated prejudice from the admission of the evidence. We turn to that question.

The district court based its issuance of an OFP on several factual findings. It explained that it based its determination on

the text messages (narrowing down the time when the abuse occurred), the relationship evidence demonstrating [Osgood]’s history of domestic abuse, the tone and content of [Osgood]’s responsive text messages to [his father] after being alerted to the child’s injuries (suggesting that he already knew about the assault), and his testimony during the hearing, which lacked credibility.

In light of these findings, any error in admitting the challenged domestic-conduct evidence could not reasonably have changed the result. *See id.* The timeframe surrounding the child’s injury, Osgood’s reaction to his father’s questions about the child’s injury, and Osgood’s lack of credibility as a witness convincingly established that he committed the abuse against the child, even without the evidence of past abuse against Shanley. Any error in admitting the evidence was therefore not prejudicial and does not support reversal. *See id.* at 841.

II. The district court’s factual findings are supported by the record.

Osgood next argues that the finding that he committed an act of domestic abuse against the child is unsupported by record evidence, so the district court abused its discretion by issuing the OFP. He asserts that the evidence is too speculative because there were several caretakers of the child during the night and none of Shanley’s witnesses at the hearing were present at the house to be able to identify which caretaker perpetrated the abuse. Shanley contends that the record supports the district court’s issuance of an OFP based on its determination of the witnesses’ credibility.

Osgood challenges only the factual finding that he committed an act of domestic abuse, and not the application of law to the facts. “We review [factual] findings for clear error, which means that the district court’s findings must be ‘manifestly contrary to the

weight of the evidence or not reasonably supported by the evidence as a whole.” *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012) (quoting *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004)); see *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (discussing clear-error standard of review). On appeal from a district court’s decision regarding whether to grant an OFP, “[a]n appellate court will ‘neither reconcile conflicting evidence nor decide issues of witness credibility.’” *Aljubailah*, 903 N.W.2d at 643 (quoting *Gada*, 684 N.W.2d at 514). “[W]e view the evidence in the light most favorable to the decision.” *Ekman*, 812 N.W.2d at 895. And, “[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary.” *Kenney*, 963 N.W.2d at 223 (quotation omitted).

The district court’s factual finding that Osgood perpetrated the abuse is supported by the record. The child was injured—she had bruising on her face. Because of the child’s size, that injury could not have been caused by running into a doorknob, as Osgood initially suggested in his text messages to Shanley. There is no dispute that this injury occurred during Osgood’s parenting time. The district court found that J.P. (who testified that Osgood never saw the child during the night) and Osgood’s father (who testified—contrary to Osgood’s testimony—that Osgood was not in the house during the night) were not credible witnesses. In addition, Osgood testified that he did not give the child the bruises, but the district court found that Osgood’s testimony lacked credibility. In contrast, the district court found Shanley and her father to be credible witnesses, and they both testified to previous instances where the child was injured during Osgood’s parenting time. Thus,

deferring to the district court's credibility determinations and reviewing the record in the light most favorable to the district court's findings, we conclude that the district court's findings of fact are not clearly erroneous. As a result, even if the record could be read as Osgood suggests, that fact would be "immaterial." *Id.* (quotation omitted).

The record evidence, even without the testimony of the prior domestic conduct against Shanley, supports the district court's finding that Osgood abused the child. In light of its factual findings, the district court did not abuse its discretion by issuing an OFP against Osgood on behalf of the child.

Affirmed.