

*This opinion is nonprecedential except as provided by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
A21-1591**

In re the Matter of:

Heather McKaila Dehmer, petitioner,
Respondent,

vs.

Matthew Paul Phelps,
Appellant.

**Filed June 20, 2022
Affirmed
Jesson, Judge**

Itasca County District Court
File No. 31-FA-21-1997

Heather Dehmer, Grand Rapids, Minnesota (pro se respondent)

Matthew Phelps, Bovey, Minnesota (pro se appellant)

Considered and decided by Reyes, Presiding Judge; Jesson, Judge; and
Rodenberg, Judge.*

NONPRECEDENTIAL OPINION

JESSON, Judge

The district court granted respondent Heather Dehmer's petition for an Order for Protection (OFP) after concluding that appellant Matthew Phelps had committed domestic

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

abuse by threatening her. Phelps contends that the record does not support this finding, that the district court's order is vague, that Dehmer's counsel acted unethically towards him, that his evidence was not handled properly, and that the transcript is inaccurate. Because the record supports the district court's conclusion that Phelps committed domestic abuse and because it does not support Phelps's assertions of error, we affirm.

FACTS

In August 2021, Dehmer petitioned for an OFP following a fight with Phelps. At an evidentiary hearing, Dehmer testified that she had been in a relationship with Phelps from 2016 through 2021. The parties moved into a house together in 2017 along with Phelps's dog and Dehmer's four cats. In early 2021, Phelps joined the Army Reserve and needed to undergo training at boot camp. Shortly before Phelps left for boot camp, Dehmer decided to break up with him. Phelps did not take the breakup well, according to Dehmer.

Dehmer moved her belongings into a separate bedroom the night that she broke up with Phelps. Afterwards, while Dehmer was in the bedroom, Phelps stood outside the room—blocking the doorway—berating her. Dehmer testified that she stashed a knife under her pillow because she was afraid that Phelps would enter the room and harm her. Later that night, Phelps started to enter her room, but Dehmer reached for the knife under her pillow, and he backed off. She testified that this behavior was out of character for Phelps, and that it “terrified” her. Phelps left for boot camp two or three days after this incident.

While he was in boot camp, Phelps repeatedly called Dehmer. She ignored the calls. Eventually, he sent her a letter in which he stated that if he did not hear back from her, he

might “have to do something drastic like leave [training].” When Phelps finished bootcamp, he returned to the house that the parties shared. Dehmer testified that the relationship was over and that she treated Phelps as just a roommate from then on.

Dehmer went on vacation in August and asked a friend to take care of her cats in her absence. But one of the cats began to urinate in the hallway of the house, and Phelps put the cat into a kennel. Dehmer returned home upon hearing this and confronted Phelps. She testified that during the resulting argument, Phelps said: “If you do not stop arguing with me, one day you will disappear.” Dehmer took the statement as a threat to her life, left the home, and called 911 from the side of the road. She testified that she requested the OFP because she did not feel safe living in the same home as Phelps.

Phelps agreed with much of Dehmer’s testimony. He admitted that he stood in the doorway of Dehmer’s room while yelling at her and that the door is the only exit from the bedroom. But he denied making any threats in the letter he sent from bootcamp and explained that he was mostly concerned about his dog’s wellbeing. And he reviewed some text messages between himself and Dehmer that he alleged showed her being psychologically abusive to him. Turning to the August fight, Phelps admitted that he said that Dehmer “could go missing” if she kept yelling at him. But he testified that he did not intend to scare Dehmer by doing so—he just wanted her to leave him alone.

In September 2021, the district court issued an OFP in favor of Dehmer. The court found that Phelps committed domestic abuse by blocking Dehmer in the bedroom and yelling at her during the pre-bootcamp fight, as well as by threatening her during the August

fight. The court awarded Dehmer the use and possession of the home. And Phelps was ordered to not possess any firearms for the duration of the order.

Phelps appeals.

DECISION

Phelps contends that the record does not support the district court's conclusion that he committed domestic abuse against Dehmer. We review this grant of an OFP for an abuse of discretion and defer to the district court's determination of the credibility of the witnesses. *Thompson v. Schrimsher*, 906 N.W.2d 495, 500-01 (Minn. 2018). And we view the record in the light most favorable to the district court's findings and will reverse only if we are firmly convinced that a mistake was made. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). With this standard in mind, we turn to the definition of domestic abuse.

Here, Dehmer alleged that Phelps threatened her. An alleged victim of domestic abuse can petition a district court for an OFP. Minn. Stat. § 518B.01, subd. 4 (2020). The district court may issue the order if the petitioner demonstrates that domestic abuse occurred. *Id.*, subd. 6 (2020). Domestic abuse includes the infliction of fear of imminent physical harm committed against a household member. *Id.*, subd. 2(a)(2) (2020). And persons who presently live together or have lived together in the past are "household members." *Id.*, subd. 2(b)(4) (2020). Having defined the type of domestic abuse applicable here, we next consider Dehmer's burden of proof.

As petitioner, Dehmer bore the burden of showing that it was more likely than not that her fear of harm occurred. *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015).

An OFP may be justified if a person manifests a present intention to inflict fear of imminent physical harm, bodily injury, or assault on a household member. *Pechovnik*, 765 N.W.2d at 99. No overt physical act is necessary for a district court to issue an OFP. *Id.* Mindful of the above, we review the district court’s decision to grant Dehmer’s OFP petition.

Here, the record supports the district court’s decision to grant the OFP. Dehmer and Phelps are household members because they resided together. Minn. Stat. § 518B.01, subd. 2(b)(4). Phelps admitted blocking Dehmer in her bedroom and later saying to her that if she kept yelling at him, she “could go missing like that.” Dehmer testified that she was terrified by the bedroom incident, and that she took the “you could go missing” statement as a threat against her life. After Phelps made the statement, Dehmer left the home and called 911 from the side of the road. Dehmer testified that she did not feel safe around Phelps. While Phelps explained that his only intention was to make Dehmer leave him alone, he admitted on cross examination that, at the time, he thought he had to “say something particularly mean to get [Dehmer] to leave [him] alone.” Viewing this record in the light most favorable to the district court’s findings, and deferring to the court’s credibility determinations, the district court did not clearly err in finding that Phelps’s statement showed a present intent to inflict fear of harm in Dehmer. *Pechovnik*, 765 N.W.2d at 99. Accordingly, the district court acted within its discretion by issuing the OFP.

Phelps’s arguments to the contrary are unpersuasive. First, he argues that the district court’s order is vague, but the district court found two instances of abuse based on infliction

of imminent fear of harm: the pre-bootcamp fight, and the August fight. And the court's order identifies these two incidents in sufficient detail.

Second, Phelps contends that Dehmer's counsel acted unethically towards him when Dehmer's counsel asked him the same question repeatedly. But counsel was attempting to clarify Phelps's state of mind at the time that he stated that Dehmer "could go missing" because Phelps testified that he had no intention to scare her. The record reveals no misconduct by counsel.

Third, Phelps asserts that the evidence he "submitted" to the referee was not handled properly, in reference to the text-message exchange that he testified about and attached to his appellate brief. But Phelps did not offer the text messages into evidence. Nor did the referee accept them. Phelps has not shown an error in this regard.

Fourth, Phelps alleges that the transcript is inaccurate and that some of his statements were "changed to be unfavorable or incoherent." But he does not provide any examples. And the record does not support the assertion that Phelps's statements at the hearing are incoherent.¹

Finally, Phelps argues that the record does not support the referee's conclusion that he threatened Dehmer because he asserts that he never intended to cause her fear. But the referee, after considering the testimony of both parties, determined that Dehmer's testimony was more credible and found that Phelps committed two acts of domestic abuse.

¹ Still Phelps urges us to listen to the recording of the hearing instead of relying on the transcript, but the transcript—not the recording—is the official record of the proceedings, and hearing. Minn. R. Pub. Access to Recs. of Jud. Branch 4, subd. 3(d); *see* Minn. R. Civ. App. P. 110.01 (defining record on appeal).

We defer to such credibility determinations. *Thompson*, 906 N.W.2d at 500-01. And Phelps’s statement that Dehmer could “go missing” shows a present intent to inflict fear of imminent physical harm to a household member, even without an overt physical act accompanying the threat. *Pechovnik*, 765 N.W.2d at 99. Accordingly, Phelps has not shown that the district court abused its discretion by granting the OFP in favor of Dehmer.

Affirmed.