

*This opinion is nonprecedential except as provided by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
A22-0975**

In the Matter of:

Sharon Rene Sagan Lewis,
Respondent,

vs.

Craig Robert Lewis,
Appellant.

**Filed April 10, 2023
Affirmed
Bjorkman, Judge**

Fillmore County District Court
File No. 23-FA-18-317

Sharon Rene Sagan Lewis, Canton, Minnesota (pro se respondent)

James McGeeney, Doda McGeeney, Rochester, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges the district court's extension of an order for protection (OFP), arguing that the district court abused its discretion because the record does not support a finding that respondent reasonably feared him. We affirm.

FACTS

In early May 2018, respondent Sharon Lewis (sister) petitioned for an OFP against appellant Craig Lewis (brother). Her supporting affidavit averred that brother physically assaulted and scared her in late April 2018. On that occasion, brother came to her home and used a tractor to “smash[] things” and to prevent her from leaving in her vehicle. Sister was afraid he would hit or run her over with the tractor. Brother then “jumped off” the tractor and approached sister while screaming at her. He proceeded to punch her in the arm and head, “body slam[]” her to the ground, and kick her ankle. When sister got up and walked toward her house, brother followed her with his “chest puffed out” and his “hands clenched in fists” before leaving. Sister called the police and sought medical care. Sister further alleged a history of abuse at brother’s hand, noting that in October 2017 he came to her home and “intimidate[d]” her “by chest bumping[,], getting close with clenched fists[,] and destroying property.” She believed the violence would continue because “he has continually become more violent when angry.”

The district court granted the OFP ex parte. The OFP was effective for two years and prohibited brother from committing “acts of domestic abuse” and from going to sister’s house or having contact with her except during “family events.” Brother did not timely request a hearing to contest the OFP.

In May 2020, shortly before the OFP was set to expire, sister applied for a two-year extension. Her application stated that she was still “reasonably in fear of physical harm” from brother and alleged that he had engaged in several “acts of harassment or stalking.” Brother timely requested a hearing, during which the parties and their mother testified. The

district court made no findings as to whether brother had engaged in further acts of abuse, harassment, or stalking. But it found that sister remained in “reasonable fear of physical harm from [brother]” and granted the extension.

In May 2022, sister applied for another OFP extension. She averred that she was still “reasonably in fear of physical harm” from brother and that brother had “engaged in acts of harassment or stalking.” She expressed fear that brother would try to hurt her “as revenge for causing him to have a criminal record (Disorderly Conduct August 2018 conviction), losing possession of his firearms (May 2018) and because [the] Court granted [her] request for Dismissal of [brother’s] civil case (January 2022).” And she recounted numerous acts by brother, including reporting her to law enforcement and committing theft and vandalism at her property. The application concluded with sister’s statement that despite her fear that brother would physically harm her, she would “take whatever legal means necessary to reduce the chances of him being able to ever hurt [her]: physically, mentally, sexually or financially again.” The district court granted an ex parte extension for a period of one year.

Brother timely requested a hearing, during which sister testified about the incidents that led her to originally seek an OFP and to seek extensions. She stated that the facts she alleged in her original OFP petition were true and she described a “life-long history” of intimidating and violent behavior by brother. Sister testified that she was still afraid of brother. On cross-examination, sister acknowledged that brother has not entered her property or directly contacted her since the OFP was granted. The district court found that

sister reasonably feared that brother would harm her and granted a two-year extension of the OFP on that basis.

Brother appeals.¹

DECISION

The Minnesota Domestic Abuse Act (the Act) permits a district court to extend an existing OFP if:

- (1) the respondent has violated a prior or existing order for protection;
- (2) the petitioner is reasonably in fear of physical harm from the respondent;
- (3) the respondent has engaged in the act of harassment within the meaning of section 609.749, subdivision 2; or
- (4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

Minn. Stat. § 518B.01, subd. 6a(b)(1)-(4) (2022). The Act does not require a petitioner to show that the respondent harmed them or that physical harm is imminent to obtain an OFP extension. Minn. Stat. § 518B.01, subd. 6a(b); *see also Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012) (recognizing that petitioner need not show actual or imminent physical harm to extend an existing OFP).

We review a district court’s decision to grant relief under the Act for an abuse of discretion. *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). “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

¹ Sister did not file a brief, but we consider the appeal on its merits pursuant to Minn. R. Civ. App. P. 142.03.

omitted). We review a district court’s factual findings for clear error. *Ekman*, 812 N.W.2d at 895. In doing so, we do not weigh or reweigh evidence, as that is the province of the district court. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 223 (Minn. 2021); *see Butler v. Jakes*, 977 N.W.2d 867, 871-72 (Minn. App. 2022) (applying *Kenney* in an OFP appeal).

Brother argues that the district court abused its discretion by extending the OFP because sister’s allegations alone were not sufficient evidence to establish that she was *reasonably in fear* of brother. And he argues that granting the OFP extension does not further the purpose of the Act because sister “presented no credible evidence” that brother presents a “credible threat” of physical harm to sister. Neither argument persuades us to reverse.

First, the record supports the district court’s finding that sister reasonably feared brother would harm her. The original OFP was based in part on the fear and physical harm brother caused sister in 2018, which resulted in his conviction for disorderly conduct. Brother does not contest this. To support her extension request, sister submitted an affidavit and testified that she still feared brother. Brother cites no authority for his contention that his compliance with the 2018 and 2020 OFPs precludes a finding that sister continued to fear him at the time of the 2022 extension hearing. And we are not persuaded by his suggestion that the district court erred by relieving sister of her burden to produce evidence of her reasonable fear. The record does not reflect such an error. The district court did not state that sister need not present any evidence. Rather, it explained that the fact brother had not violated the OFP did not render sister’s fear of physical harm

unreasonable. And the district court further explained that it relied on the record and on sister's testimony that she remains in reasonable fear of physical harm from brother, rejecting brother's argument that sister's fear was unreasonable. We can neither reweigh the evidence nor second-guess the district court's implicit credibility determinations. *Id.*

Second, the Act does not require additional or recent acts of domestic abuse to extend an existing OFP. While evidence of such acts could support an extension, the Act provides that evidence of current reasonable fear of harm is, in and of itself, sufficient to extend an OFP. Minn. Stat. § 518B.01, subd. 6a(b)(2). We are not persuaded otherwise by brother's citation to two foreign authorities that require additional threats or acts to have occurred since the original protective order was issued. In contrast, the Act expressly provides four alternative bases for extending an OFP, only two of which turn on a respondent's conduct since the OFP was issued. Brother concedes that he cannot find any Minnesota authority to support his argument. That is precisely because the Act clearly states otherwise. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 499 (Minn. 2018) (noting that "when the Legislature wanted to impose a temporal requirement [for obtaining relief under the Act], it knew how to do so" and refusing to read such a requirement into the Act where the legislature did not expressly impose one).

Because the Act, by its terms, does not condition extension of an OFP on a showing of recent acts of abuse and the record supports the district court's findings that sister reasonably feared physical harm from brother, we affirm.

Affirmed.