

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1225**

In the Matter of:
Natasha Elizabeth Ann Isenhower, petitioner,
Respondent,

vs.

Jeffrey Thomas Isenhower,
Appellant.

**Filed June 26, 2023
Reversed
Slieter, Judge**

Hennepin County District Court
File No. 27-DA-FA-22-897

Catherine Turner, Minneapolis, Minnesota (for respondent)

Christa J. Groshek, Aaron J. Roy, Groshek Law, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Slieter, Judge.

SYLLABUS

A domestic abuse no contact order (DANCO) is not an order for protection (OFP) for purposes of issuing a subsequent OFP pursuant to Minnesota Statutes section 518B.01, subdivision 6a (2022).

OPINION

SLIETER, Judge

Pursuant to Minnesota Statutes section 518B.01, subdivision 6a, a district court may extend relief granted in an existing OFP or may grant a subsequent OFP if a prior OFP has expired. The standard for granting this relief is different from the standard for granting an initial OFP. In this case, no OFP had been issued against appellant Jeffrey Isenhower. The district court, however, treated a DANCO issued against Jeffrey¹ as an OFP and, based on the standard in subdivision 6a(b), granted an OFP against him. Because a DANCO is not an OFP and able to support the issuance of an OFP under the standard in Minnesota Statutes section 518B.01, subdivision 6a, we reverse.

FACTS

In February 2022, Jeffrey's father-in-law took his son and Jeffrey to lunch. Unbeknownst to Jeffrey, his stepsister, respondent Natasha Isenhower, worked at the restaurant as a server and was assigned to their table. Ten-and-one-half years earlier, Jeffrey had pleaded guilty to sexually abusing Natasha and, as part of his ten-year probationary sentence, the district court issued a DANCO. The DANCO expired in August 2021.

Natasha recognized Jeffrey when she brought menus to the table, so she asked a coworker to serve the table. She continued to serve other tables and began texting a friend who was familiar with the prior sexual abuse.

¹ Because the parties share a last name, we use their first names to prevent confusion.

Meanwhile, Jeffrey was “pretty sure” the server was Natasha and began to text his sister-in-law, who is an attorney and familiar with his sexual-abuse case, to inquire whether he was in violation of any law by this contact. She advised him that he was not breaking the law because the DANCO had expired, but she recommended that he stay with his in-laws, her father and brother, to avoid encountering Natasha alone. She also advised Jeffrey to tell his in-laws that the server was Natasha so they would not take him there again, but not until after they left the restaurant because her father and brother “can’t play cool.”

As Jeffrey and his in-laws were finishing their meal, Natasha’s friend, whom she previously texted, arrived and confronted the group, telling them that they should not be there. When Jeffrey and his in-laws did not leave, Natasha’s friend became louder and talked about Jeffrey’s criminal history until staff escorted her out of the restaurant. Jeffrey and his in-laws then left the restaurant.

Natasha petitioned for an OFP because she was “scared that [Jeffrey] can come anytime and hurt [her], and his friends can come and harass [her]” now that he knew where she worked. The district court issued an *ex parte* OFP and scheduled a hearing. *See* Minn. Stat. § 518B.01, subd. 7 (2022).

At the evidentiary hearing, both parties were represented by counsel and testified on their own behalf. Jeffrey also called as witnesses his father-in-law and sister-in-law, whom he had texted during the incident. He also submitted as evidence the text-message conversation between himself and his sister-in-law.

The district court found that the contact “was an accident” and Jeffrey “credibly testified that he did not know that [Natasha] worked at the restaurant at that time.” But the district court focused on Natasha’s “visceral reaction, as it’s been described, upon seeing [Jeffrey]” and looked to Minnesota Statutes section 518B.01, subdivision 6a—which provides for extending the relief granted in an existing OFP or issuing a subsequent OFP. The district court orally announced that it would issue a “subsequent” OFP based on the expired DANCO and Natasha’s fear upon seeing Jeffrey. The district court treated the DANCO as “akin to an underlying order for protection because they serve the same purpose.” Later the same day, the district court issued the written OFP. The district court found that Natasha was “in reasonable fear of infliction of imminent physical harm from [Jeffrey]” and concluded that “the lower threshold found under Minn. Stat. § 518B, subd. 6a [was] appropriate in this matter” because of the history of sexual abuse and its “surmise[.]” that “had [Natasha] initially sought an Order for Protection on those grounds it would have been granted.” Jeffrey appeals.²

ISSUE

Did the district court abuse its discretion by treating a DANCO as an OFP for purposes of issuing a subsequent OFP?

² Natasha did not file a brief in this court, and our court ordered the appeal to proceed pursuant to Minn. R. Civ. App. P. 142.03, which provides that, if the respondent does not file and serve a brief, “the case shall be determined on the merits.”

ANALYSIS

We review the district court’s decision to grant an OFP for an abuse of discretion. *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). The 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.* (quoting *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011)); *see also Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (“A district court abuses its discretion by making findings of fact that are unsupported by the evidence, misapplying the law, or delivering a decision that is against logic and the facts on record.” (quotation omitted)). We give deference to the district court’s assessment of witness credibility and do not reconcile conflicting evidence. *Thompson*, 906 N.W.2d at 500-01; *Aljubailah ex rel. A.M.J. v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017). We review questions of statutory interpretation *de novo*. *Thompson*, 906 N.W.2d at 498.

Jeffrey argues that the district court misapplied the law by treating the expired DANCO as an OFP and issuing an OFP pursuant to the standard for a subsequent OFP. Whether a DANCO may be considered an OFP presents a question of statutory interpretation, which we review *de novo*. *Id.*

“The goal of all statutory construction is to effectuate the intent of the legislature,” which we determine by examining the statute as a whole. *Id.* (quotation omitted). “If the statute is clear and not ambiguous, then we apply its plain and ordinary meaning.” *Id.* (quoting *A.A.A. v. Minn. Dep’t of Human Servs.*, 832 N.W.2d 816, 819 (Minn. 2013)). “When the plain language of the statute is unambiguous, ‘the letter of the law shall not be

disregarded under the pretext of pursuing the spirit.” *In re J.M.M.*, 890 N.W.2d 750, 753 (Minn. App. 2017) (quoting *State v. Peck*, 773 N.W.2d 768, 772 (Minn. 2009)).

The purpose of the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 (2022), is “to provide an efficient remedy for victims of abuse as an alternative to other available legal remedies.” *Thompson*, 906 N.W.2d at 498 (quoting *State v. Errington*, 310 N.W.2d 681, 682 (Minn. 1981)). As a remedial statute, the Domestic Abuse Act “receives liberal construction but it may not be expanded in a way that does not advance its remedial purpose.” *Sperle v. Orth*, 763 N.W.2d 670, 673 (Minn. App. 2009) (quotation omitted). Jeffrey contends that the statute unambiguously precludes a district court from using an expired DANCO as a basis for issuing a subsequent OFP, and we agree.

We begin with an overview of the statutory framework for issuing OFPs. The Domestic Abuse Act creates “an action known as a petition for an order for protection.” Minn. Stat. § 518B.01, subd. 4. The petition must “allege the existence of domestic abuse, and shall be accompanied by an affidavit made under oath stating the specific facts and circumstances from which relief is sought.” *Id.*, subd. 4(b). Domestic abuse is defined as “(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 . . . ; sexual extortion . . . ; or interference with an emergency call” when “committed against a family or household member by a family or household member.” *Id.*, subd. 2(a). “Family or household members” include persons “who have resided together in the past.” *Id.*, subd. 2(b)(4). The petitioner must show that a preponderance of the evidence supports issuing the OFP. *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015).

The petition must “state whether the petitioner has ever had an order for protection in effect against the respondent” and “whether there is an existing order for protection in effect under this chapter.” Minn. Stat. § 518B.01, subd. 4(c), (d). If a petitioner has previously obtained relief, the district court “may extend the relief granted in an existing order for protection or, if a petitioner’s order for protection is no longer in effect when an application for subsequent relief is made, grant a new order.” *Id.*, subd. 6a(a). The district court

may extend the terms of an existing order or, if an order is no longer in effect, grant a new order upon a showing that:

(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.

Id., subd. 6a(b) (emphasis added). Extension of an OFP or issuance of a subsequent OFP does not require the petitioner “to show that physical harm is imminent.” *Id.*

With this background in mind, we turn to whether the Domestic Abuse Act supports the treatment of a DANCO as an OFP for purposes of issuing a subsequent OFP. *J.M.M.*, 890 N.W.2d at 753. Based on the plain statutory language, we conclude that it does not.

The Domestic Abuse Act states that “proceeding[s] under this section shall be *in addition* to other civil or criminal remedies.” Minn. Stat. § 518B.01, subd. 16 (emphasis added). A DANCO is one such “other” remedy, which exists in a separate statute and is available only in criminal proceedings. *See* Minn. Stat. § 629.75 (2022) (providing for

DANCOs); *State v. Ness*, 819 N.W.2d 219, 223 (Minn. App. 2012) (noting that OFPs are issued in a civil proceeding whereas DANCOs are issued in criminal proceedings), *aff'd*, 834 N.W.2d 177 (Minn. 2013). The Domestic Abuse Act nowhere references DANCOs, and the DANCO statute references OFPs only once and for a limited purpose, authorizing the imposition of a DANCO in a criminal proceeding for violation of an OFP. *See* Minn. Stat. § 629.75, subd. 1(a)(3). Thus, the plain language of the Domestic Abuse Act makes clear that OFPs are a form of relief distinct from other remedies, such as DANCOs, and this plain language cannot be disregarded under the pretext of pursuing the spirit of the law. *J.M.M.*, 890 N.W.2d at 753. Therefore, a DANCO is not an OFP for purposes of issuing a subsequent OFP.

Not only does the OFP statute not expressly treat a DANCO as an OFP, the substantive differences between an OFP and a DANCO support our conclusion that the legislature did not intend for them to be treated as interchangeable. DANCOs are issued in criminal or juvenile delinquency proceedings related to domestic abuse. Minn. Stat. § 629.75, subd. 1(a). They are issued at the request of the prosecutor or *sua sponte* by the district court and without the right to a separate hearing to contest the DANCO. *See Ness*, 819 N.W.2d at 223, 227; Minn. Stat. § 629.75, subd. 1. By contrast, OFPs are a civil remedy initiated by a victim and with opportunity for the responding party to contest the requested OFP at a hearing. *Ness*, 819 N.W.2d at 227; Minn. Stat. § 518B.01, subd. 4. Furthermore, the burdens of proof for DANCOs and OFPs differ, *compare Ness*, 819 N.W.2d at 227-28 *with Oberg*, 868 N.W.2d at 64, as do the penalties for violating them, *compare* Minn. Stat. § 629.75, subd. 2 *with* Minn. Stat. § 518B.01, subd. 14.

Additionally, our caselaw has recognized that there are “parallels” between OFPs and harassment restraining orders (HROs) and that these similarities make the statutes and their related caselaw helpful in interpreting each other. *Anderson v. Lake*, 536 N.W.2d 909, 911 n.1 (Minn. App. 1995); *see also Ness*, 819 N.W.2d at 227 (noting that OFPs and HROs are both civil orders and contrasting them with DANCOS); Minn. Stat. § 609.748 (2022) (authorizing HROs). But the same is not true for OFPs (or HROs) and DANCOS. *See Ness*, 819 N.W.2d at 227 (contrasting DANCOS with OFPs and HROs).

DECISION

A DANCO is not an OFP and cannot serve as the basis for issuing a subsequent OFP. The district court abused its discretion by issuing an OFP based on the standard for a subsequent OFP when no prior OFP existed. Accordingly, we reverse.

Reversed.