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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1434**

In the Matter of:
Heidi Sue Heller, obo minor children,
Respondent,

vs.

Beau Thomas Geisler,
Appellant.

**Filed June 20, 2023
Affirmed
Bjorkman, Judge**

Itasca County District Court
File No. 31-FA-22-1027

Michael P. Boulette, Seungwon R. Chung, Laura E. Kvasnicka, Taft Stettinius & Hollister
LLP, Minneapolis, Minnesota; and

Savannah L. Welch, Heimerl & Lammers, LLC, Minnetonka, Minnesota (for respondent)

Tom Kuesel, Tom Kuesel, P.A., Bemidji, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges an order for protection (OFP) issued in favor of two of his
daughters, arguing that the district court abused its discretion (1) in its conduct of the

hearing, (2) by admitting hearsay evidence, and (3) by determining that he committed domestic abuse and granting the OFP. We affirm.

FACTS

Appellant Beau Geisler (father) and respondent Heidi Heller (mother) were married for approximately 16 years and have five joint children: twin boys born in July 2005 and three daughters, O. born in March 2009, A. born in February 2011, and B. born in January 2013. They divorced in 2020.

In April 2022, mother petitioned for an OFP on behalf of the three girls based on allegations that father had been abusing O. and A. for several years by climbing into their beds and “spooning” them and, when in O.’s bed, touching her on the stomach and breasts, and biting her arms and ears.¹ Mother alleged that father’s abuse caused O. and A. to suffer anxiety and panic attacks and A. to develop an eating disorder. She also expressed concern that father was touching B. inappropriately. She attached to the petition a three-page printout of a text message that O. sent to father telling him that she was refusing further contact with him for numerous reasons, including the spooning and biting. The district court granted an emergency ex parte OFP and scheduled an evidentiary hearing. The district court also appointed a guardian ad litem (GAL) to advise on custody and parenting time.

Before the hearing, mother provided notice that she would not call the girls as witnesses but instead present evidence of statements they made to her and their therapists

¹ Mother previously obtained an OFP against father on her own behalf, and her request for an extension was pending at that time.

about father's conduct, arguing that the evidence is admissible under the residual hearsay exception, Minn. R. Evid. 807. Father objected and requested that the girls testify during the hearing. The district court conducted a hearing on this issue. At the conclusion of that hearing, the court announced that it would question the three girls in chambers, and allow counsel to submit questions for the court to ask in lieu of direct- and cross-examination. Mother submitted two pages of questions. Father declined to do so, instead emphasizing his objection to the procedure and suggesting only a list of topics for the court to address.

The district court began the OFP hearing by questioning the girls individually, with counsel simultaneously observing from the courtroom by video. O., who was then 13 years old, explained that father would get into bed with her, under the covers, and "hold [her]" and "spoon [her] and like press his body into [her]," with "his private parts . . . pressing into [her] private parts" and her "backside," staying for "hours at a time." She described father spooning her sisters in their shared bedroom and said he "was always walking around in like his boxers." When she told father, "I don't like the way that like you sleep with us," he denied it and got angry. Father also bit her arms and ears, once leaving a mark on her arm. When she told him it hurt and made her uncomfortable and asked him to stop, he refused, saying that "it didn't hurt and that [she] was just being dramatic." O. wrote father the long text message that mother included with the OFP petition; she acknowledged that mother helped her by "review[ing]" it but emphasized that she wrote it herself. And O. stated that father told A. that mother's then-boyfriend, now her husband, was going to shoot A. and poison her "and so [A.] got a huge eating disorder from that," chewing her food and then spitting it out "so she wasn't consuming any food."

A., then 11 years old, similarly described father getting into bed with them, under the covers. She explained that he “gets really close to [her] in bed” and sometimes bites her ear. When asked whether the bites were “hard” or “playing around,” she responded that he “just bites it,” it hurts, and when she told him so, he pretended not to hear. Father told her that mother’s husband was going to shoot her or poison her, which scared her and led her to develop an eating disorder. She could not “shake” her fear of mother’s husband for five or six months.

Nine-year-old B. said that father also “snuggle[d]” with her, but on top of the covers. And she recalled father biting her sisters’ ears.

The proceedings resumed in the courtroom. Mother testified about the girls’ anxiety, O.’s panic attacks, and A.’s eating disorder, and the noticeable increase in their distress shortly before and after visits with father. She also recounted the girls’ statements to her about father’s conduct. O. told her that father would get into bed with her in his underwear, touch her on her “butt,” under her underwear at the top of her pubic hair, and “around her breasts,” and bite her. Father continued even after O. asked him to stop. A. told mother that father said mother’s husband would shoot or poison her, which led her to spit out her food, leaving “spit piles” around the house.

Father testified that he “snuggled” with the girls at bedtime but only for 10 or 15 minutes, fully clothed, and never in a sexual way. They never expressed any discomfort with his actions, and he specifically denied pressing his “privates” against O.’s as she had described. He also denied biting the girls, explaining that he would make kissing noises

near their necks, and they would say his beard scratched and laugh. Father believes that mother wrote the text message that O. purportedly sent him complaining about his conduct.

The district court also received testimony from a child-protection worker who investigated maltreatment concerns. She interviewed A. and B., observed an interview of O., and interviewed mother and father; she did not move forward with a child-protection proceeding, partially because there was no physical evidence of abuse, only conflicting statements, and partially because the ex parte OFP already protected the girls. The GAL also testified briefly, and the district court received her report, which summarized her investigation and recommended that, if the court granted an OFP, the girls have no contact with father “for the duration of the OFP or until further modified in family court.”

Following the hearing, the district court found that father committed domestic abuse against O. in the form of “bodily harm” and criminal sexual conduct and against A. by inflicting fear of imminent harm. The court found insufficient evidence of domestic abuse against B. The district court granted an OFP in favor of O. and A., which awarded mother sole custody of them, denied father parenting time, and prohibited father from contacting them for two years or “unless/until otherwise ordered in the parties’ family court file.” The court also ordered father to submit to a psychosexual evaluation and participate in treatment.

Father appeals.

DECISION

I. The district court did not abuse its discretion in its conduct of the hearing.

A district court conducting an OFP hearing must adhere to the rules of evidence. *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017). But it has “broad discretion” in applying those rules. *Id.* Likewise, the district court has discretion in managing courtroom procedure, *State v. Romine*, 757 N.W.2d 884, 892 (Minn. App. 2008), *rev. denied* (Minn. Feb. 17, 2009), and examination of witnesses, *Aljubailah ex rel. A. M. J. v. James*, 903 N.W.2d 638, 644 (Minn. App. 2017); Minn. R. Evid. 611.

Father contends the district court abused its discretion by questioning the girls in chambers rather than having them testify in open court. This argument is unavailing for two reasons. First, he did not obtain a transcript of the hearing at which the district court decided upon this procedure. We “cannot presume error by the district court.” *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022). Rather, father bears the burden as the appellant of providing a sufficient record to show “the alleged errors and all matters necessary for consideration of the questions presented.” *Grundtner v. Univ. of Minn.*, 730 N.W.2d 323, 334 (Minn. App. 2007) (quotation omitted); *see Butler*, 977 N.W.2d at 873 (applying this principle in an OFP appeal). Absent a transcript, the record reveals only an effort by the district court to accommodate both mother’s desire to shield the girls from this process and father’s request that they testify at the hearing.

Second, father identifies no legal authority prohibiting the court’s chosen procedure. He emphasizes our holding in *Olson* that the rules of evidence apply to an OFP hearing, but he does not identify any evidentiary rule that precludes a district court from questioning

child witnesses in chambers as part of an OFP hearing. *See State, Dep't of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to address an inadequately briefed issue); *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007) (applying *Wintz* in a family-law appeal). He also contends he has a right to cross-examination, but he cites only cases addressing the Sixth Amendment right to confrontation in criminal cases. Because father failed to provide a sufficient record or legal authority to support his argument that the district court abused its discretion by questioning the girls in chambers, his challenge to that procedure fails.²

II. The district court did not commit prejudicial error in its evidentiary rulings.

“‘Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Minn. R. Evid. 801(c). Hearsay is generally inadmissible, Minn. R. Evid. 802, but there are numerous exceptions, *see* Minn. R. Evid. 803, 804. Even if a hearsay statement is not covered by a specific exception, it may nonetheless be admissible if it has “equivalent circumstantial guarantees of trustworthiness,” is evidence of a material fact, is more probative than other reasonably available evidence, and serves the rules of evidence and the interests of justice. Minn. R. Evid. 807. We will not disturb a district court’s

² Father also contends the district court exhibited bias in favor of mother by interviewing the girls in chambers. He has forfeited any such challenge by failing to present it to the district court, *Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 236 (Minn. App. 2005), or cite any legal authority in his appellate brief, *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017). Moreover, father’s claim is based on unfavorable findings and rulings, which are not a basis for imputing judicial bias. *Ag Servs. of Am.*, 693 N.W.2d at 236.

evidentiary ruling absent an abuse of discretion. *Olson*, 892 N.W.2d at 841. The appealing party must demonstrate both evidentiary error and resulting prejudice. *Id.* at 842.

Father asserts two hearsay arguments. He first contends that the district court abused its discretion by admitting the girls' statements in chambers because they were (1) not under oath, (2) not made in court, and (3) not subject to cross-examination. Father forfeited this argument because he did not object to the girls' statements on hearsay grounds. *See State v. Steward*, 645 N.W.2d 115, 124 (Minn. 2002) (explaining that appellant who made no contemporaneous objection "failed to preserve the issue for appellate review"). And the argument fails on its merits. The district court confirmed that each girl knew the difference between the truth and a lie and secured each one's promise to tell the truth, satisfying the oath or affirmation requirement of Minn. R. Evid. 603. *See State v. Mosby*, 450 N.W.2d 629, 633 (Minn. App. 1990) (quotation omitted) (requiring only "solemn undertaking to tell the truth"), *rev. denied* (Minn. Mar. 16, 1990). And father identifies, and we discern, no authority for the proposition that sworn testimony given in chambers or without cross-examination is hearsay, particularly when both parties are given ample opportunity to submit questions in advance and the testimony is recorded and transcribed along with the rest of the hearing. *See Wintz*, 558 N.W.2d at 480; *Brodsky*, 733 N.W.2d at 479. Accordingly, we are unpersuaded that the girls' statements in chambers were hearsay.

Father next argues that the district court abused its discretion by admitting the girls' statements to mother, the child-protection investigator, and the GAL. He contends these hearsay statements are not admissible under Minn. R. Evid. 807 because they lack the

requisite “equivalent circumstantial guarantees of trustworthiness” and are not more probative than the girls’ testimony. Father’s argument does not convince us to reverse.

As noted above, father must provide a sufficient record to show the claimed error. *Grundtner*, 730 N.W.2d at 334. While the district court did not articulate its reasoning in a written order or during the evidentiary hearing, it may have done so at the hearing it conducted to address mother’s request to present statements the girls made to others under rule 807. But father did not provide us with a transcript of that hearing, so we have an insufficient record to evaluate the court’s reasoning. And we will not presume error. *Butler*, 977 N.W.2d at 873.

Moreover, father has not demonstrated any prejudice from admitting the girls’ statements to others. Evidentiary error is prejudicial if “it might reasonably have influenced the fact-finder and changed the result of the proceeding.” *Olson*, 892 N.W.2d at 842. When the only evidence of domestic abuse supporting an OFP is inadmissible hearsay, the error in admitting that evidence is prejudicial. *Id.* But the erroneous admission of evidence is harmless if the evidence is cumulative or is corroborated by other admissible evidence. *George v. Est. of Baker*, 724 N.W.2d 1, 9 (Minn. 2006). That is the case here.

O. and A. testified that father got into bed with them, under the covers, and spooned and held them; he pressed his “private parts” into O.’s “private parts” and rebuffed requests to stop. They also testified that he bit them, left a mark on O., and rebuffed requests to stop. Both girls testified that father told A. that mother’s husband would shoot and poison her. B. likewise described father climbing into bed with and biting her older sisters. O.’s and A.’s out-of-court statements to mother, the child-protection worker, and the GAL

largely repeated these descriptions of father’s conduct, adding only details about how father touched O. while in bed with her. As such, any error in admitting the girls’ statements to others was harmless.

III. The district court did not abuse its discretion by determining that father committed domestic abuse and granting the OFP.

We review the decision whether to grant an OFP for abuse of discretion. *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). 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 omitted). We review questions of law, such as statutory interpretation, de novo. *Id.* at 498. But we apply a deferential clear-error standard of review to the district court’s factual findings. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). In reviewing for clear error, we “neither reconcile conflicting evidence nor decide issues of witness credibility.” *Aljubailah*, 903 N.W.2d at 643 (quotation omitted). We view the evidence in the light most favorable to the findings and will not disturb them unless the evidence as a whole leaves us “with a definite and firm conviction that a mistake has been committed.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted).

To obtain an OFP, a petitioner must prove by a preponderance of the evidence that the respondent has committed “domestic abuse.” Minn. Stat. § 518B.01, subds. 2(a), 4(b) (2022); *Aljubailah*, 903 N.W.2d at 643. Domestic abuse includes any of the following committed against a family or household member: (1) “physical harm, bodily injury, or assault”; (2) “infliction of fear of imminent physical harm, bodily injury, or assault”; or

(3) various enumerated crimes, including criminal sexual conduct. Minn. Stat. § 518B.01, subd. 2(a). Father challenges the district court’s determination that he committed all three forms of domestic abuse.

Bodily Harm against O.

The district court found that father caused O. “bodily harm” by biting her and leaving a mark on her arm. Father does not dispute that O.’s testimony supports this finding. He argues only that this finding is insufficient to establish domestic abuse without a finding that he intended to harm her. This argument implicates the definition of “domestic abuse” and, therefore, turns on statutory interpretation.

Absent ambiguity, we interpret statutory language according to its plain and ordinary meaning. *Rew v. Bergstrom*, 845 N.W.2d 764, 775 (Minn. 2014). In doing so, we will require only those findings for granting an OFP that the legislature expressly indicated in the statute. *See Thompson*, 906 N.W.2d at 499-500 (holding that because the bodily harm definition of domestic assault includes no temporal component, it does not require recent harm); *Rew*, 845 N.W.2d at 775 (declining to require a finding of new acts of domestic abuse to extend an OFP because statutory language does not impose such a requirement); *Ekman*, 812 N.W.2d at 896 (concluding that extension of OFP based on evidence of violation, without conviction, was sufficient when statute refers specifically to violation). This restraint follows the maxim that we must avoid adding statutory terms that the legislature omitted, *Thompson*, 906 N.W.2d at 499, and effectuates the recognized legislative intent to protect and accommodate victims’ needs, *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 527-28 (Minn. 2012).

The relevant definition of domestic abuse requires a showing of “physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a)(1). Because this definition does not expressly reference intent, proof of intent is not required unless the words necessarily imply it. Only one of the three terms necessarily implies an intent requirement. The word “assault” plainly refers to the crime of assault, which includes an element of intent. Minn. Stat. § 609.02, subd. 10(2) (2022). The alternative terms “physical harm” and “bodily injury” do not. *See State v. Loge*, 608 N.W.2d 152, 155 (Minn. 2000) (stating that “‘or’ signifies the distinction” between concepts). And neither carry the same implication of intent as the term “assault.” To the contrary, the similar concept of “bodily harm” means simply “physical pain or injury, illness, or any impairment of physical condition,” Minn. Stat. § 609.02, subd. 7 (2022), and becomes assault only when inflicted intentionally, Minn. Stat. § 609.02, subd. 10(2). We therefore conclude that a finding of domestic assault under Minn. Stat. § 518B.01, subd. 2(a)(1), does not require proof that the alleged abuser intentionally inflicted bodily harm.

Even if such proof were required, the district court’s findings reflect, and the record supports, an implicit finding that father intentionally inflicted bodily harm. O. testified that she told father it hurt when he bit her and asked him to stop, but he refused. The district court found that father’s refusal to stop indicated aggression. On this record, we discern no abuse of discretion in granting the OFP based on father’s bodily harm against O.

Criminal Sexual Conduct against O.

The district court found that father touched O.’s “‘butt,’ ‘boobs,’ and pubic area,” and spooned her with his “privates” pressed into hers. And it found that father continued

the contact after O. asked him to stop. The court determined that these acts amounted to touching O.'s intimate parts with aggressive intent, which is consistent with the definition of criminal sexual conduct. *See* Minn. Stat. §§ 609.343, subd. 1a(e) (defining second-degree criminal sexual conduct to include “sexual contact” with child under 14), .341, subds. 11 (defining “sexual contact” as touching of “intimate parts” with “sexual or aggressive intent”), 5 (defining “intimate parts” as “the primary genital area, groin, inner thigh, buttocks, or breast of a human being”) (2022).

Father asserts two challenges to the sufficiency of evidence that he acted with aggressive intent.³ He first contends the evidence falls short because O. did not testify that he acted with aggressive intent. But intent is generally proved through circumstantial evidence. *State v. Barshaw*, 879 N.W.2d 356, 367 (Minn. 2016). The district court appropriately considered O.'s descriptions of father's actions and words in assessing his intent; any testimony from O. about father's intent would merely have been additional circumstantial evidence. Father also contends a finding of aggressive intent requires proof of violence, not mere continuation of contact after a request to stop. We disagree. While a finding of “aggressive” intent often rests on evidence of violence, *e.g.*, *State v. Ahmed*, 782 N.W.2d 253, 257, 262 (Minn. App. 2010) (affirming finding of aggressive intent based on burning of child's penis), we have expressly recognized that “repeated attempts to accomplish sexual contact” can indicate “sexually aggressive intent,” *In re Welfare of*

³ Father also argues that there is insufficient evidence that he acted with sexual intent. But criminal sexual conduct requires proof of either sexual *or* aggressive intent, not both. *State v. Austin*, 788 N.W.2d 788, 792 (Minn. App. 2010), *rev. denied* (Minn. Dec. 14, 2010).

T.J.C., 670 N.W.2d 629, 633 (Minn. App. 2003), *rev. denied* (Minn. Jan. 20, 2004). Because the record amply supports the district court’s finding that father touched O.’s intimate parts with aggressive intent, the district court did not abuse its discretion by granting the OFP.

Causing A. Fear of Imminent Physical Harm

The district court found that father caused A. fear of imminent physical harm by telling her that mother’s husband would shoot her and poison her. The court acknowledged that whether father’s words establish domestic abuse is a “close call” because they related to “someone else” harming A. But the court found them sufficient because they caused A. to suffer substantial anxiety and to develop an eating disorder.

In challenging this determination, father first contends this form of domestic abuse is equivalent to the crime of assault (fear) and therefore requires evidence that he intended to cause A. fear of harm. We are not persuaded. The statutory definition of domestic abuse is similar to the statutory definition of assault (fear), but with the conspicuous absence of any express reference to intent. *Compare* Minn. Stat. § 518B.01, subd. 2(a)(2) (defining domestic abuse as “infliction of fear of imminent physical harm, bodily injury, or assault”), *with* Minn. Stat. § 609.02, subd. 10(1) (2022) (defining assault as “an act done with intent to cause fear in another of immediate bodily harm or death”). And we cannot infer an intent requirement from the language of the statute because the pertinent word, infliction, refers only to “imposing or meting out something unpleasant.” *The American Heritage Dictionary of the English Language* 900-01 (5th ed. 2011); *cf.* Minn. Stat. §§ 609.02, subd. 10(2) (requiring “intentional infliction” of harm), .3455, subd. 1 (same), .3775,

subd. 1 (same) (2022). Because committing domestic abuse through “infliction of fear of imminent physical harm, bodily injury, or assault” neither expressly nor impliedly requires proof of intent, we decline to add such a requirement. *See Thompson*, 906 N.W.2d at 499; *Rew*, 845 N.W.2d at 775; *Ekman*, 812 N.W.2d at 896.

Father next argues that his comments to A. indicated nothing more than “possible future harm,” not “imminent” harm. We agree that possible harm is not enough; the harm must be “[a]bout to occur.” *See American Heritage Dictionary, supra*, at 879 (defining “imminent”). But words alone can cause one to fear that harm is about to occur. *Hall v. Hall*, 408 N.W.2d 626, 629 (Minn. App. 1987). The record supports the district court’s finding that father’s words did so. Father told A. that mother’s husband, a man she saw regularly, would poison her or shoot her. These comments were not a hint of possible future harm but vivid parental warnings of specific harm. And they caused A. substantial anxiety and an eating disorder, both of which were most acute right after returning from a visit with father, reflecting her fear that harm was about to occur.

Finally, father contends that this form of domestic abuse requires proof that he caused A. to fear harm from him, not from another. We do not doubt that most instances of “infliction of fear of imminent physical harm, bodily injury, or assault” will involve words or actions that cause the victim to fear harm at the hands of the person inflicting the fear. But when an abuser causes their victim to fear imminent harm from someone or something else in their life, particularly when the victim is a child incapable of maturely assessing the likelihood of the harm, we discern nothing in the statute that precludes a

finding of domestic abuse. Indeed, permitting relief under such a circumstance is consistent with the statute's purpose "to protect victims." *Schmidt*, 818 N.W.2d at 526.

In sum, the record amply supports the district court's findings that father caused O. bodily harm, committed acts consistent with criminal sexual conduct against O., and caused A. to fear imminent physical harm. Accordingly, we discern no abuse of discretion in its decision to grant an OFP to protect them from future acts of abuse.

Affirmed.