

*This opinion is nonprecedential except as provided by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
A22-1632**

Charles Matthew Waters, petitioner,
Appellant,

vs.

Anita Marie Waters,
Respondent.

**Filed June 26, 2023
Affirmed
Hooten, Judge***

Nicollet County District Court
File No. 52-FA-22-468

Charles Matthew Waters, North Mankato, Minnesota (pro se appellant)

Anita Marie Waters, Fridley, Minnesota (pro se respondent)

Considered and decided by Jesson, Presiding Judge; Smith, Tracy M., Judge; and
Hooten, Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant challenges the district court's order dismissing his petition for an order for protection (OFP) against respondent on behalf of himself and the parties' minor daughter. Appellant argues that the district court erred: (1) in its interpretation of the

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

Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 (2022); (2) in its determination that appellant failed to meet his burden of establishing domestic abuse under Minn. Stat. § 518B.01; and (3) dismissing the petition for an OFP. We affirm.

FACTS

Appellant Charles Matthew Waters petitioned for an OFP against respondent Anita Marie Waters, his estranged wife, on behalf of himself and the parties' minor daughter (daughter) under the Minnesota Domestic Abuse Act (the Act),¹ Minn. Stat. § 518B.01. In an affidavit in support of the petition, Charles alleged that daughter was “being terrorized by her mother, who herself is mentally ill, as part of an ongoing campaign of deliberate parental alienation, and deprivation of parental rights.” He also alleged that Anita had violated a harassment restraining order (HRO) that he had against her. Charles submitted several exhibits in support of his petition, including a video showing Anita retrieving her car from Charles's residence while the HRO was in effect.

In the affidavit and supporting documents, Charles listed several instances of conduct that comprised the alleged parental alienation. Charles alleged that Anita asked daughter to choose to either live with Anita or Charles and that daughter chose Anita. Charles also alleged Anita ran so-called “Dad's coming!” drills, told daughter that Charles was pretending to be disabled but was not disabled, sought to replace Charles as “co-parent” with Anita's ex-husband, and replaced daughter's grandparents with Anita's former mother-in-law. Charles also alleged that his phone had been blocked from

¹Because both the appellant and respondent share a last name, we refer to the parties by their first names throughout this opinion.

daughter's prior phone, and he did not have her new phone number. Charles also alleged Anita has not fostered any visitation or attempts to communicate between daughter and him, although he acknowledged in a memorandum in support of his petition that daughter had stated she was happy and did not want to live with her father. Charles asserted that Anita's conduct had caused mental health issues for daughter, alleging that daughter was staying up until early hours of the morning and began treatment for anxiety, depression, and suicidal ideation four months after leaving to live with Anita.

The district court held a hearing on September 21, 2022. Both parties testified at the hearing; no other testimony was presented. Charles's testimony was generally consistent with the allegations raised in his petition. He testified that Anita had alienated daughter from him, and that Anita violated an HRO when she retrieved a car on his property. He also asserted that "[Anita] admitted to what amounts to assault in court. It's on the transcript. She said she pushed me."²

Anita testified regarding daughter's choice to reside with her: "I made the decision to leave. I broached the subject with [daughter]. I gave her opt-- I said, 'You can stay if you want, absolutely, but I need to leave.' . . . and [daughter] said, 'I'm coming with you.'"

² The district court record before us does not contain any transcript in which Anita admits to pushing Charles. Charles filed an addendum along with his informal brief that contains a transcript from a different proceeding. This court, however, may not base its decision on matters outside the record, and we may not consider materials not produced and received in evidence below. *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988); *see also* Minn. R. Civ. App. P. 110.01 (defining the record on appeal). We decline to consider the new materials Charles attached to his informal brief.

Anita testified regarding daughter's mental health issues and Charles's allegations of parental alienation:

[W]hen [daughter] started talking to me about her anxiety issues and things like that, I started taking her to therapy first. I didn't want to jump to medication right away, and the therapy has been helping. Her therapist is fantastic, in regular contact with her

As far as the accusations of alienation and—and, you know, manipulating the kids, I have done none of that . . . I don't tell [daughter] what to say. All of her thoughts—everything that she's said and done have been of her own volition.

Anita also testified that “I have never been aggressive. I have never been abusive.” And that “[Charles] would punch holes in walls . . . he acts physically and violently when angered.” Regarding the alleged HRO violation, Anita stated that there was an agreement that she would pick up the car “because it couldn't be parked on the street because he let the tabs expire.”

Charles countered that Anita's testimony was not credible. He asserted:

[Anita] saying that I get angry is simply her excuse to—for her inability to parent. She goes along with anything I say and says, ‘Oh, okay, okay, okay,’ and then when she goes behind my back and does something, she says, ‘Well, but you get angry, so I didn't want a confrontation.’

She can't handle debate. She can't handle discussion. She's too submissive to stand up for anything

I've never once punched a hole in a wall. One time when I was frustrated with the kids for allowing the dog to eat the carpet while they were watching TV, I put my hands up and went ‘D-mn it’ on the wall like this, and one hand went through. I did not punch it ever. That's never happened.

The district court took the matter under advisement and ultimately dismissed Charles's petition. The district court reasoned that Charles had failed to provide competent evidence to prove both the allegations in his petition and his assertions regarding Anita's conduct. The district court also rejected Charles's proposed interpretation of the Act. Charles appeals.

DECISION

On appeal from the district court's denial of his petition for an OFP, Charles argues the district court erred in dismissing his petition for an OFP for three reasons: (1) the district court applied an incorrect definition of "domestic abuse" when determining whether an OFP was warranted; (2) the district court determined that the HRO violation did not amount to domestic abuse; and (3) the district court determined Charles had not met his burden of proving the occurrence of domestic abuse warranting the issuance of an OFP. Because the district court properly considered Charles's petition under the statutory definitions established in the Act, and because the record supports the district court's factual determinations, we affirm.

Appellate courts review a district court's decision regarding whether to grant an OFP for an abuse of discretion. *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). "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." *Bender v. Bernhard*, 971 N.W.2d 257, 262 (Minn. 2022) (quotation omitted). Under the Act, a district court may issue an OFP upon a finding of domestic abuse. *Thompson*, 906 N.W.2d at 498-499; *see also* Minn. Stat. § 518B.01,

subds. 4, 6. Domestic abuse for purposes of the Act is defined as any of the following if committed against a family or household member: (1) “physical harm, bodily injury, or assault,” (2) “the infliction of fear of imminent physical harm, bodily injury, or assault,” or (3) “terroristic threats” or other specified offenses. Minn. Stat. § 518B.01, subd. 2(a).

A petitioner under the Act “has the burden to prove by a preponderance of the evidence that domestic abuse . . . has occurred in order for a district court to issue an OFP.” *Olson ex rel. A.C.O. v. Olson*, 892 N.W.2d 837, 840 (Minn. App. 2017). “The preponderance of the evidence standard requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists.” *City of Lake Elmo v. Metro. Council*, 685 N.W.2d 1, 4 (Minn. 2004); *see also Butler v. Jakes*, 977 N.W.2d 867, 871 (Minn. App. 2022) (citing *City of Lake Elmo* in an OFP appeal). “No relief is available, however, unless a petitioner first shows that domestic abuse has occurred.” *Thompson*, 906 N.W.2d at 499 (quotation omitted).

I. The district court applied the correct definition of domestic abuse.

Charles first argues that the district court erred in dismissing his petition for an OFP because it applied an incorrect definition of domestic abuse. Specifically, he argues that the district court should have applied a definition from the reporting-of-maltreatment-of-minors statute, which defines “physical abuse” to include “mental injury.”³ *See* Minn. Stat.

³ Charles argues, in the alternative, that the definition of domestic abuse in the Act is unconstitutionally vague. Charles did not follow the procedural requirements of Minn. R. Civ. App. P. 144. Thus, this constitutional challenge is not properly before this court, and we decline to address it. *See Theorin v. Ditec Corp.*, 377 N.W.2d 437, 440 n. 1 (Minn. 1985) (stating that issue was not properly before this court where relator failed to follow rule 144).

§ 260E.03, subd. 18(a) (2022). The district court concluded that the definition of “domestic abuse” in the Act does not include the definition of “physical abuse” from section 260E.03. The district court noted that section 518B.01, subdivision 2(a), specifically defines “domestic abuse” for purposes of the Act. We agree.

“We review de novo the district court’s construction and application of a statute.” *Braend v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). In this case, the legislature explicitly defined “domestic abuse” in the Act. Minn. Stat. § 518B.01, subd. 2(a). When a phrase is “defined in a statute, that definition controls.” *State v. Morgan*, 968 N.W.2d 25, 30 (Minn. 2021). Charles cites no authority supporting his argument that courts should, in the context of a petition for an OFP under the Act, apply a definition of “physical abuse” from a statute relating to reporting the maltreatment of minors. Inadequately briefed questions are not properly before this court and need not be addressed. *See State, Dep’t of Lab. & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an issue not adequately briefed); *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”); *Braend*, 721 N.W.2d at 929 (applying *Schoepke* in an OFP appeal); *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) (stating that “on appeal error is never presumed. It must be made to appear affirmatively before there can be reversal . . . [T]he burden of showing error rests upon the one who relies upon it”). Were we to consider the question, we would conclude the district court did not err when it considered Charles’s petition under the

definition of domestic abuse in the Act and declined to apply the definition of “physical abuse” from section 260E.03.

II. The district court did not err when it determined that the alleged OFP violation was not domestic abuse.

Charles next argues that the district court erred when it determined that Anita’s alleged violation of an HRO did not amount to domestic abuse. Charles asserts Anita violated an HRO when she retrieved a car from his property and that a violation of an HRO is a “[q]ualified domestic violence-related offense” as defined in the Act. *See* Minn. Stat. § 518B.01, subd. 2(c). He argues that a qualified domestic violence-related offense is sufficient to establish domestic abuse. We are not persuaded that the district court misapplied the law.

Charles again appears to challenge the district court’s application of the Act, which we review *de novo*. *Braend*, 721 N.W.2d at 927. When interpreting statutes, “all provisions in the statute must be read and interpreted as [a] whole.” *State v. Pakhnyuk*, 926 N.W.2d 914, 920 (Minn. 2019). There is a “statutory presumption that the legislature intends an entire statute to be effective and certain” and “[t]he legislature would not . . . employ[] different terms in different subdivisions of the statute if it had intended those subdivisions to have the same effect.” *Vlahos v. R&I Const. of Bloomington, Inc.*, 676 N.W.2d 672, 677 n.4 (Minn. 2004).

A party seeking an OFP can establish the occurrence of domestic abuse by demonstrating that the facts fit any one of the three statutory definitions of domestic abuse established in subdivision 2(a). *Thompson*, 906 N.W.2d at 498-99; *see also* Minn. Stat.

§ 518B.01, subd. 2(a). None of those definitions, however, specifically reference a qualified domestic violence-related offense. That term is defined separately in subdivision 2(c) of the Act. *See* Minn. Stat. § 518B.01, subd. 2(c) (incorporating definition from Minn. Stat. § 609.02, subd. 16 (2022)). The term “qualified domestic violence-related offense,” is only referenced in, and therefore relevant to, subdivision 14 of the Act. Subdivision 14 of the Act establishes aggravating criminal penalties for OFP violations based on OFP violations. *See* Minn. Stat. § 518B.01, subd. 14(c)-(d) (establishing aggravated penalties in cases involving previous qualified domestic violence-related offenses).

Reading the statute as a whole and giving effect to all the language therein, Charles’s argument that a qualified domestic violence-related offense automatically amounts to domestic abuse is without merit. The language and structure of the Act show the legislature intended a “[q]ualified domestic violence-related offense” under subdivision 2(c) to be distinct from a finding of “domestic abuse” under subdivision 2(a). We presume the legislature, by giving these terms separate definitions under separate subsections, intended for them to have different meanings. *Vlahos*, 676 N.W.2d at 677 n.4. Further, Charles cites no authority to support his argument that the occurrence of a qualified domestic violence-related offense automatically falls under one of the three statutory definitions of domestic abuse established in subdivision 2(a) of the Act, and therefore we need not address it. *See Wintz*, 558 N.W.2d at 480; *Schoepke*, 187 N.W.2d at 135; *Braend*, 721 N.W.2d at 929; *see also Waters*, 13 N.W.2d at 464-65.

Further, to the extent Charles argues that Anita’s specific actions in retrieving a car from Charles’ home amounted to domestic abuse, we disagree. We note that the occurrence

of a qualified domestic violence-related offense may, in some cases, also establish the occurrence of domestic abuse warranting the issuance of an OFP—but only to the extent that offense also establishes “physical harm, bodily injury, or assault,” or one of the other statutory definitions established in subdivision 2(a) of the Act. In this case, Charles testified that Anita retrieving the vehicle violated an HRO, but he did not testify that this caused him any harm. He also submitted a video that merely shows Anita entering a vehicle and leaving in that vehicle. The district court found that the video Charles submitted did not provide any evidence that Anita committed domestic abuse against Charles or daughter. We discern no clear error in the district court’s findings. This court has construed domestic abuse to require “either a showing of present harm or an intention on the part of [the] appellant to do present harm.” *Andrasko v. Andrasko*, 443 N.W.2d 228, 229-30 (Minn. App. 1989). Because the record does not contain any allegations of harm or evidence of conduct which falls under the definition of domestic abuse in the Act, the district court did not err when it determined that the alleged HRO violation was not domestic abuse.

III. The district court did not clearly err when it determined that Charles failed to prove that domestic abuse occurred.

Finally, Charles argues the district court erred in its finding that the evidence Charles submitted to the court did not establish that Anita committed domestic abuse against either Charles or daughter. The district court found that “[Charles] failed to prove the allegations of his petition. He made numerous assertions about [Anita’s] conduct without competent evidence of that conduct He also did not establish that [Anita] has

committed domestic abuse against him.” Because the record does not support the conclusion that the district court clearly erred in its findings, and because this court defers to the district court’s credibility determinations, we conclude that the district court did not abuse its discretion when it dismissed Charles’s petition for an OFP.

When reviewing a district court’s decision to grant or deny an OFP, “[a]n appellate court will neither reconcile conflicting evidence nor decide issues of witness credibility.” *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (quotation omitted). Rather, appellate courts “review the record in the light most favorable to the district court’s findings” and “reverse those findings only if we are left with the definite and firm conviction that a mistake has been made.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations omitted). And where the district court’s findings implicitly indicate that the district court found a party’s testimony credible, this court will defer to that credibility determination. *Id.*

In this case, the district court heard conflicting testimony from Charles and Anita. Charles alleged that daughter is suffering emotional harm caused by parental alienation perpetrated by Anita. Based on our careful review of the record, we are satisfied that the district court did not clearly err in its finding that the evidence failed to establish Charles’s claims. While Charles argues the court should order daughter be evaluated by an expert on parental alienation, the burden is on the party seeking the OFP to prove their claims. *Olson*, 892 N.W.2d at 840. Moreover, the allegations Charles brought forward—even if supported by the evidence—do not support the conclusion that there was domestic abuse. There is no evidence of actual—or the infliction of fear of—physical harm, bodily injury,

or assault arising out of any of Charles's allegations. Charles's allegations may well suggest a tumultuous relationship, but they do not constitute domestic abuse under the Act.

Charles also argues the district court erred in determining he did not meet his burden of demonstrating the occurrence of domestic abuse based on his testimony that "[Anita] admitted to what amounts to assault in court. It's on the transcript. She said she pushed me." The record before us, however, contains no other evidence that Anita admitted to pushing Charles. The district court determined Charles did not establish that Anita has committed domestic abuse against him. Implicit in this determination is that the district court discredited Charles's testimony and credited Anita's testimony—that she has never been abusive towards Charles. We defer to that credibility determination. *Pechovnik*, 765 N.W.2d at 99. No other evidence in the record supports Charles's allegations of physical abuse. Therefore, on this record, the district court's finding that Charles failed to establish that Anita has committed domestic abuse is not clearly erroneous.

In light of the record before us, and the clear statutory language of the Act, we discern no abuse of discretion in the district court's dismissal of Charles's petition for an OFP.

Affirmed.