

*This opinion is nonprecedential except as provided by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
A23-0236**

In re the Matter of: Sheila Sophia Niaz, OBO C. A. N., petitioner,
Appellant,

vs.

David Dean Niaz,
Respondent.

**Filed July 31, 2023
Affirmed; motion granted
Connolly, Judge**

Hennepin County District Court
File No. 27-DA-FA-22-4478

Elizabeth M. Cadem, Burns & Hansen, P.A., Minneapolis, Minnesota (for appellant)

David D. Niaz, Plymouth, Minnesota (pro se respondent)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from the district court's dismissal of a petition for an order for protection (OFP), appellant argues that the district court abused its discretion in dismissing the OFP, failed to make sufficient findings of fact to support its ruling, and should have granted a harassment restraining order (HRO) as an alternative to an OFP. We affirm. We also grant appellant's motion to strike.

FACTS

In August 2022, appellant Sheila Niaz filed a petition for an OFP on behalf of her 16-year-old sister, C.N. The petition alleged that pro se respondent David Niaz, who is appellant and C.N.'s 28-year-old brother, committed domestic abuse against C.N. The petition sought an order protecting C.N. from respondent.

The district court granted an ex parte OFP against respondent, who then requested an evidentiary hearing on the petition. At the hearing, C.N. testified that she lives with her parents, and that respondent has not lived there for several years. According to C.N., she has a "very bad" relationship with respondent because "he's verbally and physically abusive" towards her mother and appellant.

C.N. testified that, on August 7, 2022, respondent stopped by her parents' house while she was eating dinner, and that she started making an audio recording because her brother was there. According to C.N., respondent ate dinner and then left the room. C.N. subsequently began confronting her mother about why she still makes food for respondent. C.N. claimed that respondent then returned to the room and "shove[d]" C.N.'s fingers in her food and took a piece of her chicken.

C.N. testified that she stopped the audio recording so that she could make a video recording on her phone. C.N. stated that, in the seven-second video, respondent is eating her food and then grabs her phone, ending the video. According to C.N., when she tried to get her phone back, respondent "grabbed [her] from . . . both sides and then shoved [her] to the ground," leaving marks on her foot and arm. And C.N. testified that photographs of her alleged injuries were taken, which were admitted into evidence.

C.N. testified that, after being thrown to the floor, she “walked after” respondent to get her phone back. She then grabbed her iPad and started recording respondent. But according to C.N., when respondent approached her, she “ran up to a locked room because [she] thought he was going to hit [her].” Respondent followed C.N. up to the room, but then put her phone on the floor and left. C.N. claimed that she was scared because respondent had “damaged” appellant’s door in the past.

After respondent left, C.N. texted appellant and informed her of the incident. But because appellant was busy and did not respond right away, C.N. decided to call the “nonemergency” number for the police. Appellant eventually responded to C.N.’s text. In the text thread, which was admitted into evidence, C.N. told appellant that she called law enforcement and that an officer was being dispatched. Appellant told C.N. that she was proud of her, that “[t]hey’re going to take [respondent] to jail,” and that “I feel like this is giving justice to 15 year old me.” Appellant also told C.N. to “[g]ive the cops our note,” which appellant testified was in reference to her “record” that “highlighted past incidences of domestic abuse.”

An officer was dispatched to the scene of the incident. Because C.N.’s mother “immediately” ran up and “would talk over” C.N., the officer brought C.N. outside away from her mother, where C.N. described respondent’s conduct and the officer listened to the recording made by C.N. The officer testified that C.N. believed that her mother would “try and minimize what happened to her,” which he found concerning. But the officer also recalled being told by C.N. that, during the dispute, she “reach[ed] for her brother.” The

officer ultimately decided not to issue a metro-side crime alert for respondent “[b]ecause it was unclear who the primary aggressor was.”

Appellant testified that she is an attorney and that she filed the OFP petition on behalf of her sister “to protect” her. Appellant also testified that she is concerned that her parents will not protect C.N. if there is not an OFP in place. And appellant testified that she is very close to C.N., but that she is not on the best terms with the rest of her family because “[t]here have been a lot of instances of just general abuse” in the past.

Respondent acknowledged eating C.N.’s food, and claimed that he paid for it and “wanted to take it back” after hearing the things C.N. was saying to their mother. Respondent also acknowledged taking C.N.’s phone, and testified that, after he took the phone, C.N. “began hitting me very aggressively.” According to respondent, he proceeded to the living-room area because he was “trying to get away [from] her.” Respondent further claimed that C.N. “continued hitting” him, prompting him to grab her arm, and that when he let go, she “fell on the couch, and it was very gentle.” Although respondent admitted seeing the marks on C.N. as depicted in the photographs, he stated that it was “impossible for th[o]se to have occurred” from the incident. Finally, respondent claimed that appellant “is the root of this,” and that her animosity towards him stems from a prior disagreement.

The parties’ mother testified that appellant and respondent, who are about a year apart in age, fought “all the time” when they were teenagers. She also testified that C.N. instigated the incident and that respondent did not harm her. She further claimed that, after the police left the house on August 7, appellant and C.N. were “celebrating” and “dancing in the house saying we have a case now.” And according to the parties’ mother, she has

never seen respondent harm her daughters, and if she did see him harm them, she would “go after him” herself.

The district court denied the OFP petition, finding that “*all witnesses that testified, except [the officer], lack some credibility.*” (Emphasis added.) The district court also found that it “had the opportunity to observe [C.N.’s] testimony and demeanor throughout the proceeding,” and found that “her demeanor is not consistent with a person who is fearful of Respondent.” And the district court found that “[b]ecause of the lack of credibility of each witness,” it “is unsure how the events on August 7th actually transpired.” Finally, the district court noted that it was “concerned that [C.N.] actually acted to provoke Respondent into an altercation.” Thus, the district court concluded that appellant did not meet the burden of proof necessary for an OFP. This appeal follows.

DECISION

I.

Appellant argues that the district court abused its discretion in dismissing her petition for an OFP petition because (A) the court “misinterpreted” section 518B.01 and “failed to apply the proper legal standard”; and (B) the court’s conclusion that appellant did not prove domestic abuse is not supported by the record.

This court reviews a district court’s decision to grant or deny an OFP for an abuse of discretion. *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). “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.” *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (quotation omitted). We view the record in the light most

favorable to the district court's findings and will reverse only if we are "left with the definite and firm conviction that a mistake has been made." *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006) (quotation omitted).

A. The district court did not misinterpret section 518B.01.

The Minnesota Domestic Abuse Act (the act) authorizes a district court to issue an OFP to protect victims of domestic abuse. *See generally* Minn. Stat. § 518B.01 (2022). To obtain an OFP, a petitioner must prove by a preponderance of the evidence that the respondent has committed "domestic abuse." *Id.*, subds. 2(a), 4(b); *Oberg ex rel. Minor Child v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). The act defines "domestic abuse" as any of the following 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 . . . ; criminal sexual conduct . . . ; or interference with an emergency call." Minn. Stat. § 518B.01, subd. 2(a).

Here, in denying appellant's OFP petition, the district court found on the record at the end of the evidentiary hearing "that it is unclear who the aggressor was in this particular instance," and that it was unclear if C.N.'s "injury was directly a result of the aggression." And in its order denying the OFP petition, the district court found that C.N. may have "purposefully acted to provoke respondent into an altercation."

Appellant argues that this court should reverse the denial of her OFP petition because the district court failed to apply the proper legal standard in making its decision. Specifically, appellant asserts that "[s]ection 518B.01 contains no provision indicating that an act is not domestic abuse if provoked, if . . . respondent is not the 'primary aggressor,'

or if the proposed protected person is an aggressor.” Thus, appellant argues that “[b]y considering whether [C.N.] provoked Respondent and/or was an ‘aggressor,’ as well as whether her injuries were a direct result of Respondent’s aggression, the District Court improperly construed section 518.01” because section 518B.01 “does not allow for such considerations in determining whether a person commits domestic abuse.”

We are not persuaded. The district court did not deny the OFP petition because C.N. was the aggressor or may have provoked respondent. Rather, the district court stated at the hearing that section 518B.01 defines “domestic abuse as physical harm, bodily injury or assault or the infliction of fear of imminent physical harm.” The district court then found that “I am persuaded by the officer’s testimony that it is unclear who the aggressor was in this particular instance.” Viewing the record in the light most favorable to the district court’s factual findings, the findings pertaining to whether C.N. provoked respondent and “who the aggressor was” relate to whether C.N. was in fear of physical harm. *See* Minn. Stat. § 518B.01, subd. 2(a)(2) (defining domestic abuse as “the infliction of fear of imminent physical harm, bodily injury, or assault” against a family or household member). In other words, the record indicates that, because the district court found that C.N. may have been the aggressor, and may have provoked respondent, she failed to demonstrate that domestic abuse occurred under section 518B.01, subdivision 2(a)(2) because C.N. was not fearful of imminent physical harm by respondent.

Moreover, the record indicates that the district court was not convinced that domestic abuse occurred under section 518B.01, subdivision 2(a)(1). *See id.*, subd. 2(a)(1) (defining domestic abuse as “physical harm, bodily injury, or assault” against a family or

household member). Specifically, the district court found that “it isn’t clear to me from the testimony about exactly how the injury occurred on [C.N.’s] foot.” Although the district court was “persuaded by the evidence” that C.N. “was hurt in some way,” the court stated that “I’m not persuaded that it was caused by aggression by [respondent]. The best evidence shows that it could have been a result of a fall.” The district court’s findings demonstrate that the court applied the proper legal standard under section 518B.01, but determined that appellant “did not meet the burden of proof necessary for an [OFP].” Thus, the district court did not misconstrue the statute in dismissing appellant’s OFP petition.

B. The district court’s decision that appellant did not prove domestic abuse is supported by the record.

Appellant also contends that the district court abused its discretion in concluding that domestic abuse was not proven at trial. We disagree. To establish domestic abuse, a party must show “present harm or an intention on the part of [the alleged abuser] to do present harm.” *Andrasko v. Andrasko*, 443 N.W.2d 228, 230 (Minn. App. 1989). But our supreme court has noted that district courts have broad discretion to issue or decline to issue an OFP even when acts of domestic abuse are established, stating

once “domestic abuse” has been established, the district court may examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP. Relevant circumstances may include, but are not limited to, the timing, frequency, and severity of any alleged instances of “domestic abuse,” along with the likelihood of further abuse.

Thompson, 906 N.W.2d at 500.

1. *Physical harm, bodily injury, or assault*

Appellant argues that the “record clearly supports a finding that respondent committed physical harm, bodily injury, or assault against [C.N].” Indeed, there is evidence in the record, including C.N.’s testimony, that, if believed, supports appellant’s position. However, the district court did *not* find this evidence to be credible. Rather, the district court found that “all witnesses that testified, except [the officer], lack some credibility,” and that “[b]ecause of the lack of credibility of each witness, the Court is unsure how the events on August 7th actually transpired.” The district court also found that, in light of the witnesses’ lack of credibility, it was “not persuaded” that respondent caused bodily injury or physical harm to C.N. And because the district court found that C.N. was not particularly credible, the court determined that appellant “did not meet the burden of proof necessary for an [OFP].” It is well settled that appellate courts “defer to the district court’s determinations of witness credibility and the weight to be given to the evidence.” *In re Welfare of T.D.*, 731 N.W.2d 548, 555 (Minn. App. 2007), *rev. denied* (Minn. July 17, 2007). Therefore, because the district court did not find the evidence presented by C.N. to be credible, which is a finding to which we defer, appellant cannot show that the district court abused its discretion in concluding that appellant did not meet her burden of proof to show that respondent committed physical harm, bodily injury, or assault against C.N.

2. *Fear of imminent physical harm, bodily injury, or assault*

Appellant also contends that the district court “abused its discretion by failing to find [that] Appellant proved, by a preponderance of the evidence, that Respondent inflicted

a fear of imminent physical harm, bodily injury, or assault” upon C.N. under Minn. Stat. § 518B.01, subd. 2(a)(2). But again, the district court did not find the evidence supporting appellant’s position to be completely credible. In referencing C.N.’s lack of credibility, the district court noted that it “had the opportunity to observe [C.N.’s] testimony and demeanor throughout the proceeding and finds her demeanor is not consistent with a person who is fearful of Respondent.” Although appellant claims that this finding improperly focuses on the present rather than the events of August 7, it is well settled that the factfinder is in the best position to assess the credibility of testimony because it is able to evaluate directly the content of the testimony, the manner in which it is delivered, and the demeanor and sincerity of the witness through whom it is given. *See In re Welfare of A.D.*, 535 N.W.2d 643, 648 (Minn. 1995) (noting that the district court stands in a superior position to appellate courts in assessing credibility of witnesses). As such, we are required to give deference and due regard to the district court’s credibility determinations. *See In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996) (“Considerable deference is due to the district court’s decision because a district court is in a superior position to assess the credibility of witnesses.”).

We take seriously all allegations of domestic abuse as do the district courts in this state. But in light of the conflicting evidence, and the deference afforded the district court in making credibility determinations, we conclude that appellant is unable to demonstrate that the district court abused its discretion in determining that appellant did not meet her burden of proof to show that respondent inflicted fear of physical harm, bodily injury, or assault against C.N.

3. *Interference with an emergency call*

Appellant further contends that the district court abused its discretion “by failing to find that appellant proved that respondent interfered with an emergency call.” But again, the district court found that “[b]ecause of the lack of credibility of each witness, the Court is unsure how the events on August 7th actually transpired.” We defer to this credibility finding. *See id.* Moreover, the record reflects that when respondent took C.N.’s phone, she was recording him; she was not making, or attempting to make, an emergency call. There is also nothing in the record indicating that respondent knew that C.N. wanted or intended to make an emergency call. And the record reflects that respondent returned C.N.’s phone to her shortly after taking it. Therefore, appellant is unable to show that the district court abused its discretion in concluding that appellant failed to meet the burden of proof necessary for an OFP.

II.

Appellant argues that the district court “failed to make particularized findings of fact to support its dismissal” of the OFP petition because the court made no findings whether (1) respondent “had caused [C.N.] physical harm or bodily injury”; (2) respondent “intended [C.N.] to fear imminent physical harm”; (3) C.N. “was fearful of Respondent on August 7, 2022”; and (4) respondent “intentionally prevented [C.N.] from placing an emergency call.” We disagree.

A district court must make findings and conclusions adequate to enable meaningful appellate review. *See Edina Cmty. Lutheran Church v. State*, 673 N.W.2d 517, 523 (Minn. App. 2004). The district court here made such findings. Although the district court did

not make findings related to whether respondent committed domestic abuse, the court declined to make such findings because the lack of witness credibility left the court “unsure of how the events on August 7th actually transpired.” And because the district court was “unsure” of what actually happened on August 7, it concluded that appellant “did not meet the burden of proof necessary for an [OFP].” Accordingly, the district court’s findings are sufficient to enable meaningful appellate review.

III.

Appellant further argues that “[a]ssuming . . . that Appellant failed to support the Petition for an [OFP] such that an OFP is appropriate in this matter, the District Court should have granted a[n HRO] as an alternative.” But we generally do not consider arguments made for the first time on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Because appellant’s argument was not made to the district court, it is not properly before us, and we decline to consider it.

IV.

Finally, appellant moved to strike (1) a police report in respondent’s addendum and all references thereto in respondent’s brief; (2) a reference in respondent’s brief to the affidavit of the parties’ oldest sister; and (3) “the last two sentences on page 19 of Respondent’s brief.” The appellate record is limited to “documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any,” Minn. R. Civ. App. P. 110.01, and “[t]he court will strike documents included in a party’s brief that are not part of the appellate record,” *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff’d*,

504 N.W.2d 758 (Minn. 1993). Because the challenged portions of respondent's brief and addendum are not part of the record below, we grant appellant's motion to strike.

Affirmed; motion granted.