STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0761
A23-0893

In the Matter of Kathryn Marie Larson
On Behalf of Minor Child, petitioner,
Respondent,

vs.

Keith Norman Marohn,
Appellant.

Filed February 12, 2024
Affirmed
Ede, Judge

Isanti County District Court
File No. 30-FA-23-61

Kathryn Marie Larson, St. Paul, Minnesota (pro se respondent)

Keith Norman Marohn, North Branch, Minnesota (pro se appellant)

Considered and decided by Ede, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In these consolidated appeals, appellant-father challenges the district court's decision to grant respondent-mother's petition on behalf of their child for an order for protection (OFP) and to issue an OFP against him. Father appears to assert that the district court's decision was an abuse of discretion because the court: (1) failed to proceed under

the juvenile-protection provisions of the Juvenile Court Act, which would have provided him the assistance of counsel; (2) failed to apply the clear-and-convincing-evidence standard; (3) misapplied the doctrine of collateral estoppel; (4) issued the OFP based on a determination of domestic abuse that lacked sufficient evidentiary support; and (5) erroneously admitted mother's hearsay testimony. We affirm.

FACTS

Appellant Keith Norman Marohn (father) and respondent Kathryn Marie Larson (mother) were married for more than 22 years. The parties had six children together. In 2016, father and mother divorced in Isanti County. In March 2023, mother petitioned Isanti County district court for an OFP on behalf of the parties' 11-year-old son, R.M.

In the petition, mother alleged that father called R.M. and threatened to beat him up the next time they met. Mother reported the incident to the police. Mother also alleged that father subsequently sent a text message to R.M. and that, when father gets angry, he has told R.M. that "he will snap his neck." Mother believed the domestic abuse would continue because it began "around the year of 1991 and has continued through the years." Mother attached a screenshot of a text message to the petition; the text message reads, "I am too scared to see you please do NOT come to the exchange today. [R.M.]" Mother also stated that there was an active OFP, filed by mother against father, on behalf of the parties' daughter.

The district court granted mother an emergency ex parte OFP and scheduled an evidentiary hearing on the matter. Before that hearing, father filed a motion requesting that the district court apply the clear-and-convincing-evidence standard to the OFP proceedings

and moved the court to hold an evidentiary hearing on a separate petition for an OFP that father had filed against mother.[1] The district court held a hearing on the motion. At the hearing, father denied the conduct alleged in the OFP petition. Father informed the district court that a separate court had denied his OFP petition and his request for a hearing thereon. The district court declined father's request to accept his OFP petition against mother "as a crossclaim or a counterclaim" in the OFP proceedings mother had brought against father.

The district court also denied father's request for application of the clear-and-convincing-evidence standard of proof, and the court filed a memorandum and order addressing the issue after the hearing. The district court determined that, because it was bound by our precedential decision in *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015), the preponderance-of-the-evidence standard of proof applied to the OFP proceeding. Father filed a notice of appeal from the district court's order regarding the standard of proof (A23-0761).

Later, at an evidentiary hearing on mother's OFP petition, both father and mother testified and cross-examined each other. Mother testified that R.M. told her that he is afraid of his father. She also stated that "[R.M.] has told me that he has received threats multiple times of his dad snapping his neck. He is scared of being beaten up. He was scared when those phone calls occurred between him and his dad." Father denied the allegations and introduced various exhibits, including screenshots of text messages between him and R.M., as well as audio recordings of his phone conversations with R.M.

[1] At the motion hearing, father seemed to suggest that his separate OFP petition against mother was based on his concerns that R.M. was "in danger" and was "being coerced."

The district court issued the OFP, finding that, although "[father] offered various exhibits," "they did not outweigh [mother's] sworn testimony outlining a history of, and current incidence, of domestic abuse." Father filed a notice of appeal from the district court's order granting the OFP (A23-0893).

Because father's two appeals arise from the same proceeding and involve related orders, this court consolidated them.

DECISION

Father appears to contend that the district court's decision to grant mother's petition and issue the OFP was an abuse of discretion because the court: (1) failed to proceed under the juvenile-protection provisions of the Juvenile Court Act, which would have guaranteed him the assistance of counsel; (2) failed to apply the clear-and-convincing-evidence standard of proof; (3) misapplied the collateral estoppel doctrine; (4) issued the OFP without sufficient evidentiary support; and (5) allowed the admission of hearsay evidence. None of these arguments have merit, and we address each in turn below.

Appellate courts review a district court's decision to grant an OFP for an abuse of discretion. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). The "district court abuses its discretion when [the] decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted).

I. The district court did not err by proceeding under the Domestic Abuse Act.

Father "seeks to overturn precedent and have the court find that the juvenile-protection provisions of the Juvenile Court Act apply when Domestic Abuse Act proceedings involve allegations of domestic child abuse[.]" Father maintains that we

should do so because he asserts that the Domestic Abuse Act, Minn. Stat. § 518B.01 (2022), and the juvenile-protection provisions of the Juvenile Court Act, Minn. Stat. §§ 260C.001-.637 (2022), must be construed in pari materia, which is a canon of statutory interpretation. "Questions of statutory interpretation are reviewed de novo." *In re Application of J.M.M.*, 937 N.W.2d 743, 747 (Minn. 2020).

The "related-statutes canon" of statutory construction, which deals with statutes that are "in pari materia, is an extrinsic canon that applies *only* to ambiguous statutes." *State v. Thonesavanh*, 904 N.W.2d 432, 437 (Minn. 2017) (emphasis added) (citing *State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999)). The canon also allows courts to construe "two statutes with common purposes and subject matter . . . together to determine the meaning of ambiguous statutory language." *Id*. (quotation and citation omitted).

"The Domestic Abuse Act was enacted in 1979 to provide an efficient remedy for victims of abuse as an alternative to other available legal remedies—such as criminal charges, tort claims, or divorce—which victims are sometimes reluctant, unable or unwilling to use." *State v. Errington*, 310 N.W.2d 681, 682 (Minn. 1981). "The Domestic Abuse Act, as a remedial statute, 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) (quoting *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992)). "It is a substantive statute which is complete in itself, carefully drafted to provide limited types of relief to persons at risk of further abuse by other 'family or household

members,' whether married or not." *Baker v. Baker*, 494 N.W.2d 282, 285 (Minn. 1992).[2] "Nothing within the plain wording of the statute suggests that reference to any other statute is necessary." *Id.* And "[a]ny proceeding under" the Domestic Abuse Act "shall be *in addition to* other civil or criminal remedies." Minn. Stat. § 518B.01, subd. 16 (emphasis added).

By contrast, the juvenile-protection provisions of the Juvenile Court Act address matters concerning children in need of protection or services; permanency matters, including termination of parental rights; postpermanency reviews; and adoption matters. *See* Minn. Stat. § 260C.001, subd. 1(b). More specifically, "[t]he juvenile court has jurisdiction in proceedings concerning any alleged acts of domestic child abuse." Minn. Stat. § 260C.101, subd. 3. And the juvenile court has "original and exclusive jurisdiction" in the following proceedings:

> (1) the termination of parental rights to a child in accordance with the provisions of sections 260C.301 to 260C.328;
>
> (2) permanency matters under sections 260C.503 to 260C.521;
>
> (3) the appointment and removal of a juvenile court guardian for a child, where parental rights have been terminated under the provisions of sections 260C.301 to 260C.328;
>
> (4) judicial consent to the marriage of a child when required by law;
>
> (5) all adoption matters and review of the efforts to finalize the adoption of the child under section 260C.317;

[2] Although the holding in *Baker* was superseded by statute, the case is cited here only for its discussion of the history and purpose of the Domestic Abuse Act. The Minnesota Supreme Court reaffirmed this discussion of the purpose of the Act in *Burkstrand v. Burkstrand*, 632 N.W.2d 206, 211 (Minn. 2001).

> (6) the review of the placement of a child who is in foster care pursuant to a voluntary placement agreement between the child's parent or parents and the responsible social services agency under section 260C.227; or between the child, when the child is over age 18, and the agency under section 260C.229;
>
> (7) the review of voluntary foster care placement of a child for treatment under chapter 260D according to the review requirements of that chapter;
>
> (8) the reestablishment of a legal parent and child relationship under section 260C.329; and
>
> (9) juvenile court guardianship petitions for at-risk juveniles filed under chapter 257D.

Minn. Stat. § 260C.101, subd. 2.

Father argues neither that the Domestic Abuse Act is ambiguous nor that the juvenile-protection provisions of the Juvenile Court Act are ambiguous. And we discern no relevant ambiguous language in either statute. As a result, the "related-statutes canon" or in pari materia canon does not apply here. *See Thonesavanh*, 904 N.W.2d at 437. Moreover, while this matter involves allegations of domestic abuse committed against a child, it does not involve any of the proceedings described in the juvenile-protection provisions of the Juvenile Court Act. We therefore conclude that the juvenile-protection provisions of the Juvenile Court Act do not apply to this matter, and that the district court did not abuse its discretion in applying the Domestic Abuse Act and proceeding thereunder.

As much as father has challenged the district court's subject-matter jurisdiction, we note that a petition for an OFP can be filed "in the court having jurisdiction over dissolution actions, in the county of residence of either party, in the county in which a pending or completed family court proceeding involving the parties or their minor children was brought, or in the county in which the alleged domestic abuse occurred." Minn. Stat.

§ 518B.01, subd. 3. The parties divorced in Isanti County in 2016. Under the Domestic Abuse Act, Minn. Stat. § 518B.01, mother filed the present petition for an OFP in Isanti County. The record also reflects an active OFP against father that mother filed in Isanti County on behalf of the parties' daughter. Thus, because Isanti County is the county in which pending or completed family court proceedings involving the parties or their minor children were brought, we conclude that the district court had jurisdiction to hear this matter under the Domestic Abuse Act.

In addition to his argument that the juvenile-protection provisions of the Juvenile Court Act should govern this case, father insists that the proceedings "[were] held without notice of the right [to] counsel," which violated his due process rights. Father provides no citation to legal authority in support of this contention. "Appellate courts cannot presume error by the district court . . . ." *Butler v. Jakes*, 977 N.W.2d 867, 873 (Minn. App. 2022) (citing *Noltimier v. Noltimier*, 157 N.W.2d 530, 531 (Minn. 1968) (dismissing appeal because of an inadequate record and stating that "[e]rror cannot be presumed")). Mere assertions of error without supporting authority or argument are inadequately briefed and are waived unless prejudicial error is obvious on mere inspection. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015).

Here, there is no prejudicial error obvious on mere inspection. Both the Sixth Amendment of the United States Constitution and article I, section 6 of the Minnesota Constitution guarantee a criminal defendant the right to counsel during criminal prosecution. The right to counsel is also guaranteed "in cases where lack of counsel could well result in a deprivation of 'life, liberty, or property without due process of law.'" *Cox*

v. Slama, 355 N.W.2d 401, 402 (Minn. 1984) (quoting U.S. Const., amend. V and XIV; Minn. Const. art. I, § 7). Additionally, a parent has the right to effective assistance of counsel in connection with proceedings in juvenile court, as provided by Minnesota Statutes section 260C.163, subdivision 3. But there is no guarantee of the assistance of counsel under the Domestic Abuse Act.

As a result, we conclude that the district court did not err by proceeding under the Domestic Abuse Act.

II. The district court did not err by applying the preponderance-of-the-evidence standard of proof.

Father appears to assert that the district court erred by declining to apply the clear-and-convincing-evidence standard of proof. We disagree.

"'Identification of the applicable burden and standard of proof presents questions of law, which [appellate courts] review de novo.'" *In re Substitute Teaching License Application of Yanez*, 983 N.W.2d 89, 94 (Minn. App. 2022) (quoting *C.O. v. Doe*, 757 N.W.2d 343, 352 (Minn. 2008)). The Domestic Abuse Act does not identify the standard of proof required for the district court to issue an OFP. But in *Oberg*, this court held that Minnesota Statutes section 518B.01, subdivision 11(b), "implies the requirement that a petitioner must meet the . . . preponderance-of-the-evidence standard to obtain an OFP."[3] 868 N.W.2d at 64. "The district court, like this court, is bound by supreme court precedent

[3] Subdivision 11(b) governs vacating or modifying an OFP and provides that a respondent named in an OFP "has the burden of proving by a preponderance of the evidence that there has been a material change in circumstances" and that the conditions the court relied on in granting the OFP "no longer apply and are unlikely to occur." Minn. Stat. § 518B.01, subd. 11(b).

and the published opinions of the court of appeals . . . ." *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010).

Here, the district court applied the standard of proof identified in a precedential opinion of this court by requiring that mother prove her OFP petition by a preponderance of the evidence. For that reason, the district court did not err in applying the preponderance-of-the-evidence standard.

III. The district court did not apply the doctrine of collateral estoppel.

Father appears to claim that the district court erred by misapplying the collateral estoppel doctrine in refusing to allow him to proceed on his OFP petition against mother "as a crossclaim or a counterclaim." Father posits that this alleged error amounts to a denial of his equal protection rights. We are not persuaded.

Collateral estoppel, or issue preclusion, bars parties from making the court redecide issues that were actually litigated or decided in a prior action. *See Mower Cnty. Hum. Servs. v. Graves*, 611 N.W.2d 386, 389 (Minn. App. 2000) (citing *Aufderhar v. Data Dispatch, Inc*., 452 N.W.2d 648, 650 (Minn. 1990)). Rather than misapplying the doctrine of collateral estoppel in this case, the district court did not apply collateral estoppel at all.

During the proceedings on mother's OFP petition against father, in his motion for application of the clear-and-convincing evidence standard, father also moved the court to hold an evidentiary hearing on his separate petition for an OFP against mother. As an initial matter, we note that whether mother allegedly committed acts of domestic abuse against R.M. was not identical to whether father committed acts of abuse against R.M. Thus, in deciding whether to grant mother's OFP petition on behalf of R.M., the district court was

not redeciding issues that were actually litigated or decided in the prior proceedings on father's separate petition for an OFP against mother. This means that collateral estoppel was entirely inapposite to this case in the first instance.

But more importantly, father admitted that a separate court had denied his OFP petition against mother, as well as his request for a hearing in that separate proceeding. Accordingly, the district court declined father's request to "accept" his petition against mother "as a crossclaim or a counterclaim" in this case. The district court's decision was not based on an application of the doctrine of collateral estoppel, but rather on the district court's appropriate adherence to established procedure. Nowhere in the Domestic Abuse Act is there a statutory right for a respondent to bring a separate OFP petition as a cross-claim or a counterclaim against the petitioner. *See* Minn. Stat. § 518B.01. If father wished to pursue his petition for an OFP against mother, he needed to appeal the separate court's apparent denial of his petition and hearing, just as he appealed the district court's decision to grant the OFP in this matter. *See* Minn. R. Civ. App. P. 103.03; *cf. Dieseth v. Calder Mfg. Co.*, 147 N.W.2d 100, 103 (Minn. 1966) (stating that "[e]ven though the decision of the [district] court in the first order may have been wrong, if it is an appealable order it is still final after the time for appeal has expired"); *Johnson v. Johnson*, 902 N.W.2d 79, 83 (Minn. App. 2017) (citing this aspect of *Dieseth*). As a procedural matter, no cross-claim or counterclaim was available to father in this case.

We conclude that the district court did not apply the collateral estoppel doctrine when it declined to hold an evidentiary hearing on father's separate OFP petition against

mother. Thus, father has not shown that the district court erred in doing so, nor has he demonstrated that the district court otherwise violated his equal protection rights.[4]

IV. The district court's decision to issue the OFP was not an abuse of discretion.

Father appears to argue that the district court abused its discretion because the record as a whole does not support the court's determination that father inflicted fear of imminent physical harm, bodily injury, or assault, upon R.M. The record defeats this claim.

The statutory definition of domestic abuse includes the infliction of fear of imminent physical harm, bodily injury, or assault, when committed against a family or household member by a family or household member. *See* Minn. Stat. § 518B.01, subd. 2(a)(2). Any family or household member may petition for an OFP. *See id.*, subd. 4(a). Family or household members include spouses and former spouses, parents and children, and persons related by blood. *See id.*, subd. 2(b)(1)-(3). The petition must allege the existence of domestic abuse and include an affidavit stating the facts from which relief is sought. *See id.*, subd. 4(b).

The Domestic Abuse Act "requires either a showing of present harm or an intention on the part of [the actor] to do present harm." *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (alteration in original) (quotation omitted). "The petitioner must show the existence of the requirements for granting an OFP by a preponderance of the evidence."

[4] Father suggests that if the parties' genders were reversed, the district court would have ruled differently. To the extent that father's conclusory contention that district courts generally engage in gender-discrimination in adjudicating OFP petitions is an equal protection claim, it lacks supporting authority, is inadequately briefed, and is therefore waived because no prejudicial error is obvious on mere inspection of the record before us. *See Butler*, 977 N.W.2d at 873; *Andersen*, 871 N.W.2d at 915.

Id. Once the petitioner establishes domestic abuse, "the district court may examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP." *Thompson*, 906 N.W.2d at 500 (holding that the court of appeals erred when it concluded, as a matter of law, that a "finding of past domestic abuse alone is insufficient to support the issuance of an OFP without a showing of a present intent to cause or inflict fear of imminent physical harm" (quotation omitted)). Relevant circumstances include "the timing, frequency, and severity of any alleged instances of domestic abuse, along with the likelihood of further abuse." *Id.* (quotation omitted). On appeal from a district court's decision to grant an OFP, "[a]n appellate court will neither reconcile conflicting evidence nor decide issues of witness credibility." *Aljubailah*, 903 N.W.2d at 643 (quotation omitted).

In the petition in this case, mother alleged that father called R.M. and threatened to beat him up the next time they met. Mother included with her petition a screenshot of a text message from R.M. to father; it reads, "I am too scared to see you please do NOT come to the exchange today. [R.M.]" The parties share joint custody of R.M., and mother testified that, in a two-week period, father had physical custody of R.M. for six days. Because the petition alleged the infliction of fear of imminent physical harm, bodily injury, or assault against a child by a parent, the petition alleged domestic abuse as defined by the Domestic Abuse Act.

At the evidentiary hearing, the district court considered the domestic abuse acts alleged in the petition, past acts of domestic abuse committed by father, and the relevant circumstances. Mother testified about the domestic abuse acts alleged in the petition, i.e.,

that father had threatened to beat R.M. up and snap his neck. Mother stated the petition alleged domestic abuse as defined by the Domestic Abuse Act because R.M. was scared by the threats and "didn't want to see his dad because he didn't feel safe." When the district court asked whether there were any other instances of physical abuse by father directed towards R.M. or herself, or others in the home, mother testified: "Yes. We have been hit. We have been verbally threatened quite a lot. Some of them have been spanked. I think we all have been spanked . . . [h]e's been on top of them. He's beat on them. He's pinned them to the ground." Mother also reported a 2016 OFP proceeding against father that also involved R.M. According to mother, she filed the 2016 OFP petition after "[father] dropped R.M. on a kitchen table, and [R.M.] fell to the floor, and he was slammed up against a wall." Mother testified that R.M. was five or six years old at the time.

While father conceded that he had "spanked" his other children in the past, he denied ever spanking R.M. But, along with the motion father filed prior to the evidentiary hearing in this case, father submitted an affidavit he had signed, in which he admitted that a court had found in a 2018 case that he had abused R.M. Father also introduced Exhibit 204, an audio recording of a March 2023 conversation between father and R.M. During the recording, father confirms that R.M. is coming to see him, and states: "It's gonna be a hard night, I think you know that." Father warns R.M. that a "spanking is coming" and "probably some groundings." Near the end of the recording, father reiterates that he plans to spank R.M. as well as ground him, but prefaces the warning with, "I don't want to scare you." R.M. then responds and asks father not to come to the visitation exchange because he wants to spend more time with his mother.

Based on the record, the district court determined that, although "[father] offered various exhibits, . . . they did not outweigh [mother's] sworn testimony outlining a history of, and current incidence, of domestic abuse." The district court also found that father made "several inconsistent statements during the hearing" and that father's arguments about the importance of corporal punishment were "outweighed by [mother's] consistent testimony that [father] has previously . . . abused the children both physically and emotionally." The district court determined that mother offered credible testimony that father "used excessive physical punishments on their other children that exceed 'spankings.'" Finally, the district court acknowledged that R.M.'s sister had an active OFP against father "due to physical injury that was extended due to [father's] failure to comply with the order."

Even if the district court had based its decision on past acts of domestic abuse alone, it would not have abused its discretion. *See Thompson*, 906 N.W.2d at 500. Here, however, not only did the district court consider past acts of domestic abuse by father, but it also considered the facts alleged in the petition, and all the other relevant circumstances. The district court ultimately determined mother's testimony was more credible than that of father, and the district court concluded that R.M. was entitled to relief. That being the case, we "will neither reconcile conflicting evidence nor decide issues of witness credibility." *Aljubailah*, 903 N.W.2d at 643. The district court's decision to issue the OFP was not based on an erroneous view of the law, nor was it a decision that went against logic and the facts in the record. We therefore conclude that the district court did not abuse its discretion in deciding to issue the OFP.

V. The district court did not commit prejudicial error by admitting mother's hearsay statements.

Finally, father appears to contend that the district court committed prejudicial error by admitting mother's hearsay testimony. This argument is unavailing.

"The Minnesota Rules of Evidence apply to domestic abuse hearings." *Olson v. Olson*, 892 N.W.2d 837, 841 (Minn. App. 2017). "Rulings on the admissibility of evidence lie within the district court's discretion, and this court will not disturb an evidentiary ruling unless it is based on an erroneous view of the law or is an abuse of that discretion." *Aljubailah*, 903 N.W.2d at 644. "An appealing party bears the burden of demonstrating that an evidentiary error resulted in prejudice." *Olson*, 892 N.W.2d at 842 (citation omitted). "An evidentiary error is prejudicial if it might reasonably have influenced the fact-finder and changed the result of the proceeding." *Id.*

Hearsay is an out-of-court statement, made by a declarant, that is offered to prove the truth of the matter asserted. *See* Minn. R. Evid. 801(c). Generally, hearsay statements are inadmissible at trial, unless an exception exists. *See* Minn. R. Evid. 802.

Mother's testimony about the threats father made to R.M. included out-of-court statements made by R.M., a declarant, that mother offered to prove the truth of the matter asserted, i.e., that father inflicted fear of imminent physical harm, bodily injury, or assault on R.M. These hearsay statements do not appear to fall under any exception. But even if mother's testimony included otherwise inadmissible hearsay, father has not shown that such error was prejudicial.

In *Olson*, this court held that, "[b]ecause the only evidence of appellant's alleged domestic abuse [was] the inadmissible hearsay statements in [mother's] petition and affidavit, the evidentiary error of considering [those] statements changed the outcome of the hearing and prejudiced [father]." 892 N.W.2d at 842. By contrast, the evidence of father's domestic abuse here went far beyond any inadmissible hearsay statements. Mother testified not only about the conduct alleged in the petition, but past acts of abuse committed by father, including the active OFP filed by mother against father on behalf of the parties' daughter, as well as an OFP she filed in 2016 against father on behalf of R.M. Mother also testified about R.M.'s decision to send a text message to father after father made the March 2023 call to R.M. that caused R.M. to fear physical abuse. The district court also heard the recording of the March 2023 call and testimony from both parties about the level of the "spankings" father had subjected the children to in the past. As discussed above, the district court did not abuse its discretion in determining based on all the evidence that mother's testimony was more credible than father's version of events. Given the record before us, we conclude that father has not carried his burden of demonstrating that any evidentiary error might reasonably have influenced the district court and changed the result of the proceeding. *See id*.

In sum, because the district court's decision to grant the OFP in this case was not based on an erroneous view of the law or against logic and the facts in the record, we discern no abuse of discretion. *See Thompson*, 906 N.W.2d at 500.

Affirmed.