

*This opinion is nonprecedential except as provided by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
A24-1114**

In the Matter of:
Alysia Sue Eschenbacher and On Behalf of Minor Child,
Respondent,

vs.

Justin Taylor Eschenbacher,
Appellant.

**Filed February 10, 2025
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Morrison County District Court
File No. 49-FA-24-593

Virginia Knudson, Borden, Steinbauer, Krueger & Knudson, P.A., Brainerd, Minnesota
(for respondent)

Sandra K. Kensy, Blaine, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Harris, Judge; and Jesson,
Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

The district court issued an order for protection (OFP) prohibiting Justin Eschenbacher from contacting his wife Alysia Eschenbacher and their minor daughter.

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

Justin appeals from that order, arguing that the district court abused its discretion by granting the OFP without finding that the child was a victim of domestic abuse and that it erred by finding that he assaulted Alysia. Because the district court did not find that the child was a victim of domestic abuse and did not provide Justin an adequate opportunity to address Alysia's abuse allegations, we reverse in part and remand for further findings. But we affirm in part, leaving intact the OFP pending further proceedings in the district court.

FACTS

Alysia Eschenbacher petitioned the district court in May 2024 for an OFP against her husband Justin Eschenbacher on her own behalf and for the couple's child, whom we will call Bethany in the interest of her privacy. The petition alleged that Justin threw Alysia on a couch, beat her with a closed fist, and grabbed her arm while threatening to break it. Alysia asserted that Justin's assaults had resulted in her being bruised, having black eyes, and being knocked unconscious, and had recently escalated. She asked the district court to limit Justin to supervised parenting time with Bethany because she was "worr[ied] he may harm the child."

The district court immediately issued an *ex parte* OFP on a form order, naming only Alysia as a protected party but granting her temporary sole custody of Bethany. The district court checked a box marking the preprinted finding, "The Petition alleges an immediate danger of domestic abuse." The court scheduled a prompt hearing on the matter.

The district court conducted the hearing a week later, at the onset of which it informed Justin, who was self-represented, of the hearing's purpose:

THE COURT: So, Mr. Eschenbacher, the hearing today is simply to determine whether or not you are contesting the *ex parte* order that's been issued.

THE RESPONDENT: Okay.

THE COURT: Are you contesting that or not?

THE RESPONDENT: Nope.

THE COURT: Okay. So you're fine with the Court leaving that in effect as it's already indicated?

THE RESPONDENT: Yep.

The district court made no findings but scheduled a second, contested hearing to address parenting time and other issues related to the OFP. It left the *ex parte* OFP in effect pending the outcome of the second hearing.

The second hearing occurred a week later, and both parties were self-represented. Alysia asked to continue temporary sole custody of Bethany, allowing only supervised parenting time for Justin and prohibiting him from going near Bethany's daycare facility. After hearing Alysia's requests on other issues, the district court asked Justin if he "underst[ood] all of that." Justin said that he did, and the district court responded, "I'm going to keep things as is but make those corrections or changes as of today's date."

The district court then filed an OFP using a standardized form. It named both Alysia and Bethany as protected parties, and it checked the box beside "Acts of domestic abuse have occurred, including the following:" and then wrote in, "5/1/24 [Justin] Assaulted [Alysia]."

Justin appeals.

DECISION

Justin appeals from the posthearing OFP, raising two primary arguments. He argues first that the district court abused its discretion by naming Bethany as a protected person. And he argues second that the district court abused its discretion by finding that he assaulted Alysia. We address each argument in turn.

I

Justin persuasively contends that the district court improperly named Bethany as a protected person in the OFP. We review a district court's decision to grant an OFP for an abuse of discretion, which includes misapplying the law and making factual findings that lack evidentiary support. *See Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). We will reverse an OFP that the district court has issued without sufficient evidence. *Bjergum v. Bjergum*, 392 N.W.2d 604, 606 (Minn. App. 1986). Our review leads us to conclude that the district court abused its discretion here.

Justin argues that the district court abused its discretion by naming Bethany as a protected person without first finding that she was a victim of domestic abuse. A district court may grant an OFP after a contested OFP proceeding only to protect a person whom the district court has found to be a victim of domestic abuse. *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523, 529 (Minn. 2012); *see* Minn. Stat. § 518B.01, subd. 4(b) (2024). The limited record here undisputedly establishes that the district court included Bethany as a protected person in the OFP without having made any finding as to whether she suffered domestic abuse. Because the order protecting Bethany lacks the necessary finding, the district court abused its discretion. On remand the district court may, in its discretion,

reopen the record for the parties to present evidence addressing whether Bethany is a victim of domestic abuse. To allow the parties sufficient opportunity to present evidence and be heard on the unaddressed allegations as they pertain to Bethany, however, we leave intact the OFP's restrictions protecting her until the district court determines the issue.

II

Justin also challenges the district court's finding that he assaulted Alysia, arguing that he did not admit to assaulting her and that the district court received no evidence at the hearings substantiating her allegations. He emphasizes that the *ex parte* OFP did not include a finding that he assaulted Alysia and that, during the hearing, he agreed only to a continuation of the OFP without conceding any of the underlying allegations. The record corroborates Justin's contention that he did not have the opportunity to present evidence at the hearing challenging Alysia's assault allegations. Precedent informs us that the district court must afford the parties in an OFP proceeding the opportunity to adequately respond to the issues that the district court ultimately determines. In *Andrasko v. Andrasko*, for example, we reversed an OFP due to insufficient evidence, observing that the district court did not ask the petitioner to "affirm or discuss her allegations of abuse" and did not ask the respondent "any questions concerning domestic abuse, threats, or any intent to do harm." 443 N.W.2d 228, 230 (Minn. App. 1989). The limited proceedings here similarly were inadequate to warrant the finding that Justin assaulted Alysia. The *ex parte* OFP found only that Alysia "*alleges* an immediate danger of domestic abuse" and nowhere concluded that Justin committed assault. At the first hearing on the OFP, the district court asked Justin whether he was "contesting the ex parte order that's been issued," and he answered no, and

then was asked whether he was “fine with the Court leaving that in effect as it’s already indicated,” and he answered yes. The district court stated at the second hearing that it would make changes to the OFP (changes that were unrelated to domestic abuse findings and that the parties did not dispute) but would otherwise “keep things as is.” The district court never invited Justin to present evidence or argument addressing Alysia’s assault allegations, and Justin, who was self-represented, never did. *Cf. Mechtel v. Mechtel*, 528 N.W.2d 916, 919–20 (Minn. App. 1995) (reversing a mutual restraining order and observing that the district court should have been “very careful” to ensure that the petitioner, who was self-represented, had agreed to the order). By finding that Alysia was the victim of abuse, the district court’s OFP exceeded the scope of the issues the parties addressed or were reasonably expected to address. The finding therefore constitutes an abuse of discretion. The OFP protecting Alysia remains in effect based on Justin’s consent, but on remand, the district court must amend its findings to accurately characterize Justin’s concession as not having objected to the OFP and accepting that it will be enforced as if there was an admission or finding of domestic abuse.

Affirmed in part, reversed in part, and remanded.