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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A11-2283**

In the Matter of:

Erika Budd-Garcia and o/b/o minor children, petitioner,  
Respondent,

vs.

Christopher Kieffer,  
Appellant.

**Filed November 26, 2012  
Affirmed  
Kalitowski, Judge**

Ramsey County District Court  
File No. 62-DA-FA-11-1097

Erika Budd-Garcia, Circle Pines, Minnesota (pro se respondent)

Christopher Kieffer, St. Paul, Minnesota (pro se appellant)

Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and  
Halbrooks, Judge.

**UNPUBLISHED OPINION**

**KALITOWSKI**, Judge

Appellant-father Christopher Kieffer challenges the district court's issuance of an order for protection (OFP) on behalf of his minor child, L.K.G. Kieffer argues that (1) the district court abused its discretion by failing to consider Minn. Stat. § 626.556

(2010) when determining that Kieffer abused L.K.G. and (2) the evidence is insufficient to support a finding of domestic abuse. We affirm.

## D E C I S I O N

### I.

The district court’s decision to issue an OFP under the Minnesota Domestic Abuse Act is discretionary. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). The district court abuses its discretion if it makes findings unsupported by the record or misapplies the law. *Id.*

Kieffer argues that the district court abused its discretion because it misapplied the law when it failed to consider Minn. Stat. § 626.556—a statute that Kieffer believes “more adequately define[s]” abuse. Kieffer also argues that the statute the district court applied—the Domestic Abuse Act, Minn. Stat. § 518B.01 (2010 & Supp. 2011)—“is too broad,” and lacks “specific parameters and appropriate verbiage.” We disagree.

As a preliminary matter, Kieffer waived this argument. Kieffer argues that the district court should have considered section 626.556 when it determined that he abused L.K.G. But Kieffer never argued this to the district court. Generally, this court will not consider matters not argued to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

But even if we were to consider Kieffer’s argument on the merits, we would conclude that it fails.

Section 626.556 requires the reporting of maltreatment of minors: “[I]t is the policy of this state to require the reporting of neglect, physical or sexual abuse of children

in the home, school, and community settings.” Minn. Stat. § 626.556, subd. 1. And it defines “physical abuse” as “any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child’s care on a child other than by accidental means.” *Id.*, subd. 2(g). Moreover, physical abuse “does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian which does not result in an injury.” *Id.*

The Domestic Abuse Act—the statute the district court applied—gives district courts the authority to issue OFPs in cases involving domestic abuse. *See* Minn. Stat. § 518B.01, subd. 4 (2010). The district court may issue an OFP to “restrain the abusing party from committing acts of domestic abuse.” *Id.*, subd. 6(a)(1) (2010). “Domestic abuse” is defined as “(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.” *Id.*, subd. 2(a)(1)-(3) (2010). These acts must be committed against a family or household member to qualify as domestic abuse. *Id.*, subd. 2(a).

Kieffer argues that the district court abused its discretion by not replacing the “domestic abuse” definition in the Domestic Abuse Act with the “physical abuse” definition in section 626.556. And he asks that this court apply the “physical abuse” definition now. But “[t]he function of the court of appeals is limited to identifying errors and then correcting them.” *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (citations omitted); *see also Lake George Park, L.L.C. v. IBM Mid-America Employees Fed. Credit Union*, 576 N.W.2d 463, 466 (Minn. App. 1998) (“This court, as an error

correcting court, is without authority to change the law.”), *review denied* (Minn. June 17, 1998). Appellant cites no authority that district courts should apply a definition of “domestic abuse” different from the definition that the legislature has provided in the Domestic Abuse Act. Thus, the district court’s application of the definition of “domestic abuse” as it is written in the statute, is not error.

## II.

Kieffer also argues that the district court abused its discretion by finding sufficient evidence to issue an OFP. We review a district court’s decision to issue an OFP for an abuse of discretion. *Pechovnik*, 765 N.W.2d at 98. “[W]e review the record in the light most favorable to the district court’s findings, and we will reverse those findings only if we are left with the definite and firm conviction that a mistake has been made.” *Id.* at 99 (quotation omitted). We “will not reverse merely because we view the evidence differently.” *Id.* (quoting *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004)).

Here, the district court based its issuance of the OFP on its finding that “[o]n or about September 28, 2011, [Kieffer] physically harmed [L.K.G.] by grabbing him and putting him down on the floor forcefully, causing injury to his left arm.” Kieffer argues that the record is insufficient to support a finding of domestic abuse. We disagree.

The testimony in this case was conflicting. Both L.K.G.’s and respondent-mother Erika Budd-Garcia’s testimonies supported allegations that Kieffer abused L.K.G. Kieffer’s testimony refuted these allegations. But we review the record in the light most favorable to the district court. *Pechovnik*, 765 N.W.2d at 99. “And ‘[w]e neither reconcile conflicting evidence nor decide issues of witness credibility.’” *Id.* (quoting

*Gada*, 684 N.W.2d at 514). By finding abuse, the district court found L.K.G.'s and Budd-Garcia's testimonies credible and discounted Kieffer's testimony. And this court gives great deference to a district court's determination of witness credibility. *Id.*; *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

And we conclude that L.K.G.'s and Budd-Garcia's testimonies support the district court's finding of domestic abuse. L.K.G. testified that Kieffer (1) picked L.K.G. up off the ground by his neck; (2) brought L.K.G. over to the couch and squeezed him around his chest; (3) threw L.K.G. to the ground, causing him to suffer carpet burn on his elbow; and (4) laid on L.K.G., making it difficult for him to breathe. Budd-Garcia's testimony corroborated L.K.G.'s account of this incident.

Kieffer cites an unpublished opinion of this court where we affirmed the district court's finding of no domestic abuse after a father grabbed his child by the jacket collar and lifted or pulled him back toward the house. But our unpublished opinions are not precedential. Minn. Stat. § 480A.08, subd. 3 (2010). And unlike this case, the district court in the unpublished opinion found the father's testimony to be credible.

**Affirmed.**