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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0513**

In the Matter of:
Julie Hildre Zweifel n/k/a Mead, petitioner,
Appellant,

vs.

Kyle Walter Zweifel,
Respondent.

**Filed December 17, 2012
Affirmed
Stoneburner, Judge**

St. Louis County District Court
File No. 69DU-FA-09-725

Julie A. Mead, Duluth, Minnesota (pro se appellant)

Jill I. Frieders, Timothy A. Woessner, O'Brien & Wolf, L.L.P., Rochester, Minnesota
(for respondent)

Considered and decided by Stoneburner, Presiding Judge; Larkin, Judge; and
Klaphake, Judge.*

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's denial of her petition for a 50-year extension of an order for protection against respondent. We affirm.

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

FACTS

In August 2009, appellant Julie Hildre Zweifel n/k/a Julie A. Mead obtained a six-month emergency ex parte order for protection (OFP) against her husband, respondent Kyle Walter Zweifel, after respondent was jailed for an incident in which appellant alleged that respondent hit her hard in the back of the head. Respondent did not challenge the initial OFP and did not challenge appellant's subsequent application for an extension of the OFP. After a January 25, 2010 hearing on the application to extend the OFP, the district court granted the extension application, finding that respondent violated the existing OFP and engaged in acts of "vandalism and contact." The district court extended the OFP for two years from the date of the hearing.

On January 4, 2012, appellant applied a 50-year extension of the OFP, alleging that respondent had engaged in acts of harassment or stalking. Appellant attached numerous documents to the application for extension. Respondent contested the extension, and the district court held a hearing on January 17, 2012. Appellant appeared pro se at the hearing; respondent appeared with counsel.

Appellant testified that respondent had been violent throughout their marriage and that she lives in constant fear of him. She testified that she barricades the doors when she is at home and sleeps with a deadbolt on her bedroom door. Appellant testified that respondent's last act of violence was the August 2009 incident. Appellant alleged, but admitted she had no evidence to prove, that since the August 2009 incident, respondent vandalized her truck in 2009 and vandalized items in her yard in 2010. Appellant also testified that she has been harassed by emails from respondent and his family making

demands in the parties' dissolution proceedings. Appellant requested at least a ten-year extension in the event that the district court would not grant a 50-year extension.

Appellant stated that she needs the OFP because it is the only thing protecting her from respondent.

Respondent denied appellant's accusations and testified that he has been to the house only twice since the OFP was issued. Both visits were in connection with the dissolution, and respondent was accompanied by a deputy sheriff both times.

Respondent stated that he did not want to have any contact with appellant and suggested that a no-contact provision be put in the dissolution decree, but he objected to any extension of the OFP. Appellant rejected respondent's proposal to put a no-contact provision in the dissolution decree.

The district court orally denied appellant's petition for an extension of the OFP, stating that it found that appellant's fear of harm from respondent is genuine but not objectively reasonable due to the lack of assaults or threats since at least 2010. The district court also found that respondent's actions in the dissolution proceedings did not constitute harassment and found that appellant's acts of filing multiple motions and an appeal in the dissolution proceedings were inconsistent with her claim that the OFP is the only thing protecting her from respondent. Immediately following the hearing, the district court issued a written order on a preprinted form titled "Domestic Abuse Order for Dismissal." On a line for designation of the district court's reason for dismissal, the district court wrote: "DISMISSED NO REASONABLE FEAR NO CURRENT ALLEGED VIOLATIONS." This appeal followed.

DECISION

The decision to extend an OFP under Minn. Stat. § 518B.01 (2010) is committed to the sound discretion of the district court. *See McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). A district court abuses its discretion when its findings are unsupported by the record or based on a mistake of law. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). This court reviews the record in the light most favorable to the district court's findings and will reverse those findings only if it is "left with the definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). "[I]ssues of witness credibility . . . are exclusively the province of the factfinder." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted).

Minn. Stat. § 518B.01 permits a district court to extend an existing OFP if the petitioner can show that

- (1) the respondent has violated a prior or existing order for protection;
- (2) the petitioner is reasonably in fear of physical harm from the respondent;
- (3) the respondent has engaged in the act of stalking within the meaning of section 609.749, subdivision 2; or
- (4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

Minn. Stat. § 518B.01, subd. 6a(a). The petitioner need only show one of these four alternatives, and the petitioner need not show actual physical harm or even imminent harm to obtain an extension of an OFP. *Id.*; *Braend*, 721 N.W.2d at 927 ("The plain language of the statute requires a showing of only one of these four alternatives.").

The district court may issue an OFP for a term of up to 50 years if “(1) the respondent has violated a prior or existing order for protection on two or more occasions; or (2) the petitioner has had two or more orders for protection in effect against the same respondent.” Minn. Stat. § 518B.01, subd. 6a(b).

Appellant meets the statutory criteria for an OFP extension because, as determined by the January 2010 extension of the emergency OFP, respondent violated a prior or existing OFP. *See id.*, subd. 6a(a)(1); *Braend*, 721 N.W.2d at 927. Although respondent denies violating the OFP, he did not appeal that finding and cannot now collaterally attack that order, which became final when the appeal period expired. *See State v. Romine*, 757 N.W.2d 884, 890 (Minn. App. 2008) (holding that OFP “is a final judgment” after expiration of appeal period and “may not . . . [be] collaterally attack[ed]” thereafter), *review denied* (Minn. Feb. 17, 2009); *see also Peterson v. BASF Corp.*, 675 N.W.2d 57, 65 (Minn. 2004) (noting that under the law of the case doctrine, “once an issue is considered and adjudicated, that issue should not be reexamined in that court . . . throughout the case”), *vacated on other grounds*, 544 U.S. 1012, 1012, 125 S. Ct. 1968, 1968 (2005).

But meeting the statutory criteria for an extension does not automatically require a district court to exercise its discretion to grant the requested extension. The statute is permissive. Minn. Stat. § 518B.01, subd. 6a(a) (“The court *may* extend the terms of an existing order” (emphasis added)); *see* Minn. Stat. § 645.44, subd. 15 (2010) (stating that “[m]ay” is permissive”). At the hearing, the district court orally stated its reasons for exercising its discretion not to grant appellant’s requested extension, the most

significant of which is the fact that respondent has not committed any acts of domestic abuse since at least 2010. The district court did not credit appellant's testimony that the OFP is the only protection she has from respondent, noting that the criminal laws and other forms of protection are available, including the no-contact order proffered by respondent but rejected by appellant. The district court also found that, although appellant's fear is genuine, it is not reasonable. Because the record supports the findings, we are unable to say that the district court abused its discretion by denying appellant's request for a 50-year OFP extension and dismissing the OFP.

Affirmed.