

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1327**

In re the Matter of:
Christine Bwari Omwando, petitioner,
Respondent,

vs.

Samuel Nyaboga,
Appellant.

**Filed April 21, 2014
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-DA-FA-13-736

Carla C. Kjellberg, Kjellberg Law Office, St. Paul, Minnesota (for respondent)

Samuel Nyaboga, New Brighton, Minnesota (*pro se* appellant)

Considered and decided by Cleary, Chief Judge; Johnson, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Christine Bwari Omwando petitioned the district court for an order for protection against her husband, Samuel Nyaboga. The district court granted the petition and issued an order for protection. We affirm.

FACTS

Omwando and Nyaboga were married in September 2005 and lived together in New Brighton until May 2013. On June 26, 2013, Omwando petitioned for an order for protection (OFP) against Nyaboga. In support of her petition, she alleged in a sworn statement that Nyaboga had abused her throughout the course of their relationship. She outlined five recent incidents of assault, threats, or stalking that occurred between May 17 and June 22, 2013. She also stated that Nyaboga previously was convicted of committing domestic assault against her in 2010. The district court granted a temporary *ex parte* order and scheduled an evidentiary hearing.

The district court conducted an evidentiary hearing on July 12, 2013. Omwando testified as follows: On May 17, 2013, Nyaboga followed her as she left their home to wait for a ride to work, threatened to kill her, and then pushed her because he was upset about the person who was giving her a ride. After this incident, he started stalking her. On one occasion, he followed her from the apartment complex where they lived to church, in a manner that made her believe that he was threatening her. She could see him in her rear-view mirror for the entire length of the drive, and he entered the church immediately after she did. On June 30, 2013, he followed her in his car when she was moving her possessions out of their apartment by tailgating her in a manner designed to cause an accident. Once he went to her workplace to look for her, despite the existence of a no-contact order. In 2010, he hit her during an incident at their home, and he later pleaded guilty to misdemeanor domestic assault based on the incident.

Nyaboga also testified. He stated that Omwando told him on May 17, 2013, that she wanted to end their relationship. He denied threatening to kill her. He also denied intentionally following Omwando to church but admitted that he went to church at the same time she did. He also denied aggressively following her when she was moving out of their apartment. He explained that he was sleeping in his car and noticed that she was taking some items that he believed were his possessions, so he followed her to find out what she would do with them.

At the conclusion of the hearing, the referee specifically stated that Omwando's testimony was credible. The district court granted the petition and issued a two-year OFP. The OFP finds that "[a]cts of domestic abuse have occurred" and refers to Omwando's affidavit as the basis for that finding. The order prevents Nyaboga from having contact with Omwando and from entering Minneapolis Community and Technical College (MCTC), where Omwando is a student. Nyaboga appeals.

D E C I S I O N

Nyaboga's *pro se* appellate brief makes numerous general complaints about the truthfulness of Omwando's testimony and about Omwando's attorney, among other things. Nyaboga's *pro se* brief also makes numerous general complaints about the district court, usually without asserting that the district court erred in any particular way. In any appeal, this court seeks to identify and analyze an appellant's assertions of error. That is a difficult task in this case because of the lack of organizational structure in Nyaboga's *pro se* brief and the abundance of general and rhetorical statements. Furthermore, Nyaboga's *pro se* brief does not contain any citations to legal authorities.

In this situation, an appellate court is justified in concluding that the appellant has forfeited all arguments for reversal. As the supreme court has stated, “An assignment of error based on mere assertion and not supported by any argument or authorities in [an] appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.” *Kaehler v. Kaehler*, 219 Minn. 536, 537, 18 N.W.2d 312, 313 (1945). Despite the absence of any legal authority, we will analyze the three assertions of error that we are able to discern in Nyaboga’s *pro se* brief.

I.

Nyaboga’s primary argument appears to be that the district court erred by issuing an OFP because Omwando’s testimony was false. We will construe this argument to include an assertion that the evidence is insufficient to support the issuance of an OFP.

To obtain an OFP under chapter 518B of the Minnesota Statutes, a petitioner must allege and prove the existence of domestic abuse. Minn. Stat. § 518B.01, subd. 4(b) (2012). The term “domestic abuse” is defined by statute as follows:

- (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).

In reviewing the issuance of an OFP, we apply a clear-error standard of review to a district court’s findings of fact. *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App. 2007). We do not attempt to reconcile conflicting evidence or to decide issues of witness

credibility because those issues “are exclusively the province of the factfinder.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted). If a district court finds that domestic abuse has occurred, the court has discretion to issue an OFP. *See Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005). “A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Pechovnik*, 765 N.W.2d at 98 (quotation omitted).

In this case, the evidentiary record supports the district court’s issuance of the OFP. Omwando testified that Nyaboga pushed her, threatened to kill her, followed her on two occasions, tried to cause a car accident, and went to her workplace despite the prohibitions of a no-contact order. The district court found Omwando’s testimony to be credible. This evidence supports a finding that Nyaboga engaged in domestic abuse by inflicting fear of imminent physical harm, bodily injury, or assault. *See* Minn. Stat. § 518B.01, subd. 2(a)(2); *see also Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989).

We note Nyaboga’s repeated argument that Omwando lied during the evidentiary hearing. But the standard of review applicable to this issue neither allows nor requires this court to determine whether her testimony was true or false. The referee found Omwando’s testimony credible, and we must defer to a fact-finder’s determination of credibility. *Pechovnik*, 765 N.W.2d at 99. In addition, we may not consider many of the factual statements in Nyaboga’s brief to the extent that they are not contained in the district court record. *See* Minn. R. Civ. App. P. 110.01; *Rostamkhani v. City of St. Paul*, 645 N.W.2d 479, 483 (Minn. App. 2002).

Thus, the district court did not err when it found domestic abuse and issued the OFP.

II.

Nyaboga also appears to argue that the district court erred by considering prior acts of domestic abuse. We note that Nyaboga did not object to this evidence during the evidentiary hearing or otherwise argue that the district court should not consider the evidence. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally will not consider issues for first time on appeal). A district court may infer a present intent to commit domestic abuse based on the totality of the circumstances, “including a history of past abusive behavior.” *Pechovnik*, 765 N.W.2d at 99. Thus, the district court did not err by considering evidence of prior incidents of domestic abuse.

III.

Nyaboga also argues that the district court erred by issuing an OFP that prevents him from entering MCTC, where he purportedly also is a student. Under the Domestic Abuse Act, a district court has broad discretion to award relief to a petitioner by issuing an order that limits an abusing person’s access to the petitioner at a variety of places. *See* Minn. Stat. § 518B.01, subd. 6. The statute is broad enough to permit a district court to order a person to not enter a petitioner’s school. Omwando listed the address of MCTC as the location of her school. It appears from the record that the district court had no reason to believe that Nyaboga also is a student at MCTC. Nyaboga testified that he attends school, but he did not testify that he attends MCTC or that he attends the same

school that Omwando attends. In light of the factual record, the district court did not abuse its discretion by ordering Nyaboga to not enter Omwando's school.

Affirmed.