

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2014).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A15-1937**

In the Matter of: Brian Andrew Pavel,
for himself and o/b/o minor children, petitioner,
Respondent,

vs.

Christi Lynn Pavel,
Appellant.

**Filed August 8, 2016
Affirmed
Halbrooks, Judge**

Washington County District Court
File No. 82-FA-15-4817

Jonathan K. Askvig, Askvig & Johnson, PLLP, St. Paul, Minnesota (for respondent)

Katheryn M. Lammers, Jenna M. Eisenmenger, Heimerl & Lammers, L.L.C.,
Minneapolis, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Halbrooks, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's grant of an order for protection (OFP) to respondent that prohibits appellant from having contact with respondent and allows her to have only supervised visitation with their minor children. Appellant argues that the

district court erred by finding that domestic abuse occurred and abused its discretion by granting the OFP and by incorporating the parties' binding and admissible temporary agreement into the OFP. We affirm.

FACTS

Appellant Christi Lynn Pavel and respondent Brian Andrew Pavel married in 2007. They have two children, B.A.P., born in 2009, and K.D.P, born in 2011. In August 2015, appellant informed respondent that she intended to dissolve the marriage, and the parties separated. The parties adopted a "nesting" arrangement in which the children would continue to live in the marital house, and appellant and respondent would alternate residing there with the children on a schedule that allowed for equal parenting time. This lasted until September until appellant moved into her own townhome, at which point the children traveled between homes.

On October 12, 2015, respondent petitioned for an OFP against appellant on behalf of himself and the two children. The petition alleged that appellant hit and slapped the children each time that they were at appellant's home, choked K.D.P., and locked the children in their rooms for hours at a time. Based on the petition, the district court granted an emergency ex parte OFP to respondent and the children.

The district court held a two-day OFP hearing in November 2015. Respondent testified that "every single time" he would pick up the children from appellant's care or take his turn residing in the house during the nesting arrangement, the children would tell him, "Mommy hit me. Mommy made my butt red. [B.A.P.] said, Mommy slapped me." Respondent stated that K.D.P. told him, "Daddy, mommy's choking me. She was

choking me, [D]addy. I couldn't breathe. She did it three times, [D]addy. I almost died." Respondent introduced three photos of K.D.P. into evidence that he took after K.D.P. had been in appellant's care for several days showing a bruise on K.D.P.'s forehead and scratches on his neck. Respondent also submitted a photo of B.A.P. that he took after B.A.P. had been in appellant's care that depicted marks around B.A.P.'s eye. Respondent testified that the children told him that appellant would lock them in their rooms for hours at a time. During the time the couple was "nesting," respondent came home and observed "claw marks" on the inside of the children's bedroom doors. Photos of the doors were introduced into evidence. Respondent also testified that he put a tape recorder in the house and heard B.A.P. on the tape screaming and yelling as he tried to escape the locked room. According to respondent, appellant told him, "I can get any guy wrapped around my finger within five minutes and I can have them do anything I want them to do to you. . . . No judge, no lawyer, no attorney, no police officer is going to tell me what to do." When asked how appellant's comment affected him, respondent stated, "I'm scared for me. I'm scared for my boys. . . . I want to get a bulletproof vest. . . . I'm fearful for my life." Respondent also testified that appellant pushed him once when they were exchanging the children.

Appellant testified that she did not choke K.D.P. or ever abuse her children. She denied ever pushing respondent or threatening to have other men do something to him. The court-appointed guardian ad litem (GAL) testified that he did not interview the children but did conduct a home visit to observe interactions between appellant and the children. During the visit, the GAL concluded that the children's behavior "was just

about all [appellant] could handle at times. [The children] obviously knew how to push her buttons.” The GAL further testified that he saw K.D.P. kick appellant multiple times during the visit and that he had heard the tape recording of B.A.P. screaming, “Let me out. Let me out.” On cross-examination, the GAL stated that he did not have any “verified information” that appellant had abused the children. But when asked whether it was his opinion that domestic abuse could not be verified, the GAL replied, “I don’t believe that’s my role to give that opinion.”

At the conclusion of the two-day hearing, the district court took the matter under advisement and subsequently issued an OFP to respondent for a period of one year. The district court found that appellant had engaged in acts of domestic abuse against respondent and the children. Specifically, the district court found that appellant “verbally threatened harm to [respondent], physically pushed him, entered his home without permission, and caused him to feel fearful and threatened.” The district court further found that respondent “established that [appellant] has engaged in a pattern of physical discipline of the two boys that has at times caused marks on their bodies and has locked them inside their bedrooms for extended periods of time, causing the boys distress and fear.” This appeal follows.

D E C I S I O N

I.

Appellant argues that the district court erred by finding that domestic abuse occurred. We will “set aside a district court’s findings of fact only if clearly erroneous, giving deference to the district court’s opportunity to evaluate witness credibility.”

Goldman v. Greenwood, 748 N.W.2d 279, 284 (Minn. 2008). A finding of fact is clearly erroneous when we are “left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted). “When evidence relevant to a factual issue consists of conflicting testimony, the district court’s decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal.” *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

A petition for an OFP must allege domestic abuse. Minn. Stat. § 518B.01, subd. 4(b) (Supp. 2015). Domestic abuse includes “(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats” committed by a family or household member against another family or household member. *Id.*, subd. 2(a) (2014). “In order to establish domestic abuse, a party must show present harm or an intention on the part of the [alleged abuser] to do present harm.” *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005) (alteration in original) (quotation omitted).

Here, the district court found that appellant committed domestic abuse by threatening harm to respondent, physically pushing him, and causing him to feel fearful and threatened. The district court found that appellant committed domestic abuse with respect to the children by causing them distress and fear, hitting and slapping them, and choking K.D.P.

The record contains sufficient evidence to support the district court’s findings of domestic abuse. Respondent testified about appellant’s statement to him, his subsequent fear for his life, and her act of pushing him. Respondent also testified concerning the

children's reports of abuse by appellant and their injuries. And respondent provided corroborating photographic evidence of the injuries and the bedroom door. Appellant argues that there was no evidence to indicate that she intended to cause or inflict bodily harm. But the district court was not required to make a finding regarding appellant's state of mind. It was only required to find present harm to respondent and the children, which it did by finding that appellant committed domestic abuse. The finding of domestic abuse is not clearly erroneous.

II.

Appellant argues that the district court abused its discretion by granting the OFP. We review the district court's decision to grant an OFP for an abuse of discretion. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926-27 (Minn. App. 2006). The district court abuses its discretion when it misapplies the law or when the record does not support its findings. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). On appeal from an OFP, "[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 (alteration in original) (quotation omitted). We will not reverse the district court simply because we might view the evidence differently. *Id.* And we will not decide issues of witness credibility or reconcile conflicting evidence, which are functions exclusively for the fact-finder. *Id.*

Appellant argues that the district court lacked sufficient evidence to grant the OFP, specifically pointing to actions by respondent that she alleges are inconsistent with domestic abuse occurring during the time period in question. For example, appellant

notes that respondent asked appellant to watch the children while respondent traveled to Florida after K.D.P. reported being choked by appellant and that respondent delayed raising any concerns about domestic abuse. But the role of this court is not to weigh this evidence against the other evidence presented at the OFP hearing. Rather, this court's role is to determine whether the record supports the district court's grant of an OFP. *Id.* at 98. Respondent's testimony about appellant's statement to him, the children's reports of being abused, and the photographs corroborating their reports of abuse are sufficient to support the district court's findings.

Appellant argues that the district court clearly erred by finding respondent's testimony credible, alleging that respondent's testimony was inconsistent and contradicted by other evidence at the OFP hearing. Appellant is essentially asking us to make credibility findings, which is not the function of this court. *See id.* at 99 (stating that issues of witness credibility "are *exclusively* the province of the factfinder" (emphasis added)). We defer to the district court's implicit credibility determinations.

Appellant argues that the district court erred by "disregarding" the GAL's testimony, which she claims supports a finding that no domestic abuse occurred. Although the district court did not explicitly discuss the GAL's testimony in its written findings, this omission does not mean that the district court disregarded his testimony. The district court heard the GAL's testimony at the OFP hearing, and the district court even engaged in brief questioning of the GAL. The GAL only observed appellant and the children interact on one occasion. Although the GAL witnessed no abuse of the children, he stated that it was not his role to opine on whether abuse had ever occurred. The

district court's order demonstrates that it implicitly found respondent's testimony and the photographic evidence to be more relevant to the question of domestic abuse than the GAL's testimony. Furthermore, appellant cites no rule mandating that a district court make specific findings regarding a GAL's testimony in an OFP case.

Appellant argues that the district court erred by not considering the totality of the circumstances in its determination of whether domestic abuse occurred. But other than appellant's assertion, the record does not demonstrate that the district court failed to consider all the evidence that the parties presented. The district court conducted a two-day hearing and took the matter under advisement before issuing the OFP. The district court properly exercised its discretion by granting the OFP.

III.

Appellant contends that the district court abused its discretion by incorporating the parties' binding and admissible temporary agreement into the OFP. On September 25, 2015, the parties entered into an agreement titled "Brian and Christi Pavel Binding and Admissible Temporary Agreement." The agreement contains terms that the parties agreed to abide by during the pendency of their marriage dissolution, including provisions related to parenting-time schedules, financial arrangements, and property valuations. The OFP states, "The parties reached a stipulated binding temporary agreement in their dissolution case on September 25, 2015. The provisions of that binding agreement remain in full force and effect except as where inconsistent with the [o]rders herein."

Appellant argues that the district court abused its discretion by incorporating the agreement into the OFP because Minn. Stat. § 518B.01, subd. 6(a) (2014), lists specific forms of relief that a district court may grant in an OFP, and the agreement contains terms beyond the scope of the relief authorized by the statute. Appellant mischaracterizes the OFP when she asserts that the district court “incorporated” the agreement into the OFP. The district court simply referred to the agreement, which appellant offered into evidence at the OFP hearing. Even if appellant could show that the district court abused its discretion by referring to the agreement in the OFP, this is an agreement containing terms that appellant previously agreed to. Any alleged error would therefore be harmless. *See* Minn. R. Civ. P. 61 (stating that harmless error is not a basis for disturbing an order).

Affirmed.