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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2043**

In the Matter:
Nita Maria Hicks,
Respondent,

vs.

Richard Warren Hicks,
Appellant.

**Filed October 23, 2017
Affirmed
Bjorkman, Judge**

Hennepin County District Court
File No. 27-DA-FA-16-4340

Nita Maria Hicks, St. Paul, Minnesota (pro se respondent)

Larry E. Reed, Law Offices of Larry E. Reed, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Bjorkman, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges an order for protection (OFP) issued against him, arguing that the district court lacked jurisdiction, the record does not support the finding that he

committed domestic abuse, and he did not receive effective assistance of counsel. We affirm.

FACTS

On June 21, 2016, respondent Nita Hicks filed an affidavit and petition for an OFP against her husband, appellant Richard Hicks. Wife alleged that on June 5, 2016, while the parties were arguing, husband “grabbed the kitchen counter and lifted it, separating it from the wall,” and that she “felt very threatened and packed to leave.” Wife also described an earlier incident in which husband, during an argument, “broke a beer bottle and cut [wife’s] arm with the glass.” She indicated that she was residing at a confidential address and separately filed that address with the district court. The district court issued an ex parte OFP that same day, precluding husband from contacting wife and excluding him from the parties’ home, wife’s confidential address, and wife’s workplace.

After a continuance that husband requested to permit the parties to mediate in their separate marriage-dissolution proceeding, the district court conducted an evidentiary hearing on October 26. Both parties testified about the two alleged incidents of domestic abuse. Husband acknowledged that both incidents occurred but disputed their timing, tenor, and effect. The district court found that husband had committed domestic abuse against wife and issued a two-year OFP on essentially the same terms as the ex parte order, with an exception to permit the parties to participate in alternative dispute resolution in their dissolution proceeding. Husband appeals.

DECISION

I. The district court had jurisdiction.

Husband asserts two “jurisdictional” challenges, one based on the county in which wife filed the OFP petition and the other based on the timeliness of the evidentiary hearing. We address each in turn, applying a de novo standard of review. *See Burkstrand v. Burkstrand*, 632 N.W.2d 206, 209 (Minn. 2001) (subject-matter jurisdiction is reviewed de novo).

County of Filing

Husband contends that the Hennepin County District Court lacked “jurisdiction” to address wife’s petition because the parties live in Ramsey County, the alleged abuse occurred in Ramsey County, and the parties’ (subsequently filed) dissolution proceeding is in Ramsey County. He relies on a provision in the Minnesota Domestic Abuse Act (the act) entitled “Court jurisdiction,” which states that an OFP petition “may be filed in the court having jurisdiction over dissolution actions, in the county of residence of either party, in the county in which a pending or completed family court proceeding . . . was brought, or in the county in which the alleged domestic abuse occurred.” Minn. Stat. § 518B.01, subd. 3 (2016). Husband argues that this language establishes a jurisdictional requirement. We disagree.

Husband places undue emphasis on the reference to “jurisdiction” in the subdivision’s headnote, which is not part of the statute itself. *See* Minn. Stat. § 645.49 (2016) (noting that statutory headnotes are “mere catchwords”). In so doing, he overlooks the absence of statutory language imposing a jurisdictional requirement. Analysis of the

act's operative language shows that the references to counties are non-jurisdictional venue directives.

Minnesota's district courts have original jurisdiction in all types of civil and criminal cases. Minn. Const. art. VI, §§ 1, 3. While each district court has the power to hear cases throughout the state, the particular county in which a case is heard is determined by matters of convenience and location of trial. *State v. Smith*, 421 N.W.2d 315, 320 (Minn. 1988). The provision of the act on which husband relies lists the possible venues in which a petitioner may seek an OFP. *See* Minn. Stat. § 518B.01, subd. 3. Even if we were to construe this list as exhaustive and mandatory, noncompliance would not render the OFP void. “[T]he fact that a civil action is brought or tried in the wrong county is not jurisdictional.” *See Claseman v. Feeney*, 211 Minn. 266, 268, 300 N.W. 818, 819 (1941). The remedy for improper venue is a change of venue, and failure to request a change waives that objection. *Rosnow v. Comm’r of Pub. Safety*, 444 N.W.2d 591, 592 (Minn. App. 1989).

When wife initiated this action, she resided at a confidential Hennepin County residence and properly filed the OFP petition in that venue. After she moved back to the parties' St. Paul residence, husband had numerous opportunities to move for a transfer of venue to Ramsey County. He did not do so. Accordingly, he has waived any venue objection.

Timely Hearing

Husband also argues that even if the district court had jurisdiction initially, it lost jurisdiction to issue the OFP because it did not timely conduct the evidentiary hearing. Both the record and the applicable law defeat this argument. The district court conducted a hearing one week after issuing the ex parte order, as required under Minn. Stat. § 518B.01, subd. 5(c) (2016). Because husband denied wife's allegations, the court scheduled an evidentiary hearing. Husband then requested a two-month continuance. He cannot now challenge the delay that he requested. *See Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 419 (Minn. App. 2010) (recognizing that the party who procured an action from the district court cannot claim error or prejudice from that action). Moreover, any delay would not have deprived the district court of jurisdiction because the statutory time frames for holding hearings on OFP petitions are not jurisdictional. *See Burkstrand*, 632 N.W.2d at 213. Husband's timeliness challenge fails.

II. The record supports the district court's finding of domestic abuse.

We review a district court's decision to grant an OFP for an abuse of discretion. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). A district court abuses its discretion if it misapplies the law or makes factual findings that are unsupported by the record. *Id.* In reviewing factual findings, we will "neither reconcile conflicting evidence nor decide issues of witness credibility" but view the evidence in the light most favorable to the district court's decision. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

A district court may issue an OFP if the petitioner demonstrates that "domestic abuse" occurred. Minn. Stat. § 518B.01, subd. 4 (2016). "[D]omestic abuse" means, in

relevant part, (1) “physical harm, bodily injury, or assault,” (2) “the infliction of fear of imminent physical harm, bodily injury, or assault,” or (3) “terroristic threats” or other specified offenses, if committed against a family or household member. Minn. Stat. § 518B.01, subd. 2(a) (2016). In order to establish domestic abuse, the petitioner must show present physical harm or that the alleged abuser had a present intent to inflict physical harm or fear of imminent physical harm. *Andrasko v. Andrasko*, 443 N.W.2d 228, 230 (Minn. App. 1989).

Husband argues that the record does not support a finding of domestic abuse because he did not physically harm wife or expressly threaten to harm her, and there is evidence refuting her claim of fear. We are not persuaded. Domestic abuse includes not only physical harm and express verbal threats but also nonverbal threatening behavior that inflicts fear of imminent physical harm, particularly when such behavior is part of an abusive pattern or history. See Minn. Stat. § 518B.01, subd. 2 (2016); *Pechovnik*, 765 N.W.2 at 99. The district court’s findings indicate this type of domestic abuse.

The district court found that on June 5, 2016, the parties were arguing and husband acted aggressively and in anger to lift up the kitchen sink, displacing it from its setting. The district court found that this conduct caused wife to feel threatened, and that she physically moved out of the way. The district court further found that husband’s conduct “would scare anyone in a way that they would believe, and consistent with the domestic abuse act, that there would be force or violence or an assault or physical harm.” And the district court found that husband “has been violent towards [wife] in the past,” which informed her reaction to the sink incident. Regarding that history, the district court

specifically found that in April 2016, husband “cut [wife’s] shoulder and underneath her arm with broken glass.”

All of these findings are based squarely on wife’s testimony and sworn affidavit, which the district court accepted after weighing the parties’ credibility. The district court expressly found wife’s version of the events not only generally more credible but specifically more believable on the issues husband raises. We defer to these credibility determinations. *See Gada*, 684 N.W.2d at 514. Because the record supports the district court’s finding that husband committed domestic abuse against wife, we discern no abuse of discretion by the district court in issuing the OFP.

III. Husband is not entitled to relief because of ineffective assistance of counsel.

Finally, husband urges us to rescind the OFP because he was denied his Sixth Amendment right to effective assistance of counsel. This argument is misplaced. The Sixth Amendment to the United States Constitution affords the right to counsel, which has been interpreted to mean the right to effective assistance of counsel, “[i]n all criminal prosecutions.” *Strickland v. Washington*, 466 U.S. 668, 685-86, 104 S. Ct. 2052, 2063 (1984). The *Strickland* framework for reviewing claims of ineffective assistance of counsel has been applied in certain civil cases involving a statutory right to counsel, such as civil-commitment proceedings. *See, e.g., Beaulieu v. Minn. Dep’t of Human Servs.*, 798 N.W.2d 542, 550 (Minn. App. 2011), *aff’d*, 825 N.W.2d 716 (Minn. 2013). But absent such a statutory right, an appellant may not bring a claim of ineffective assistance of counsel in a civil proceeding. *Maietta v. Comm’r of Pub. Safety*, 663 N.W.2d 595, 600 (Minn. App. 2003). Husband identifies no provision in the act, any other statute, or any caselaw that

affords him a right to counsel in an OFP proceeding. Accordingly, he is not entitled to relief based on ineffective assistance of counsel.

Affirmed.