STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2121

In re the Marriage of: Kathryn Marie Larson, petitioner,
Respondent,

vs.

Keith Norman Marohn,
Appellant,

County of Isanti, Intervenor.

Filed September 3, 2019
Affirmed
Ross, Judge

Isanti County District Court
File No. 30-FA-15-117

Leigh J. Klaenhammer, Hennek Klaenhammer Law, PLLC, Roseville, Minnesota (for respondent)

Keith Norman Marohn, North Branch, Minnesota (pro se appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

Kathryn Larson successfully petitioned the district court for an order for protection (OFP) prohibiting Keith Marohn from contacting Larson and Marohn's minor son, alleging that Marohn physically abused him. Self-represented Marohn moved to vacate the OFP

and asked the district court to "charge" Larson under the OFP and harassment restraining order (HRO) statutes. The district court denied Marohn's motion to vacate as precluded under Minnesota Statutes, section 518B.01, subdivision 11(b) (2018). The district court also denied his motion for an OFP or HRO against Larson, characterizing it as a request for the judiciary to interfere with the state's criminal-charging discretion. Marohn argues on appeal that the district court erred by denying his motion to vacate and mischaracterizing his motion for an OFP or HRO. Because Marohn cannot show that he suffered any prejudice from the district court's errors, we affirm.

FACTS

Divorced in 2016, Larson and Marohn each accused the other of abusing their minor son. In January 2018, Marohn petitioned the district court for an OFP on behalf of their son and an HRO against Larson to protect himself, and Larson petitioned for an OFP against Marohn on behalf of their son. The same district court judge who presided over the parties' dissolution proceedings presided over the 2018 matters. The district court denied Marohn's petitions, reasoning that any allegations must be addressed "in the parties' family law file." But it held a hearing on Larson's OFP petition and, finding that Marohn had abused the child, granted the petition and prohibited Marohn from contacting the boy for one year.

Larson filed a motion in the parties' dissolution file regarding their property dispute, and Marohn filed a responsive motion with requests bearing partly on the alleged harassment and protection issues. His motion asked the district court to vacate the OFP, "charge" Larson under the OFP and HRO statutes, restrict Larson's unsupervised contact with the child, and modify parenting time. During a motion hearing, Marohn and Larson

agreed that they would have no contact except through a third party to communicate about parenting matters. The district court issued an order granting Larson's property-related motion and denying all aspects of Marohn's motion. The court reasoned that Marohn could not seek to vacate the OFP because it lasted only one year. And characterizing Marohn's requests for an OFP and an HRO as requests to file criminal charges against Larson, the district court denied the requests, citing the prosecutor's exclusive power to file criminal charges and deeming Marohn's request "frivolous, subjecting [Marohn] to potential [statutory] penalties."

Marohn appeals.

D E C I S I O N

Marohn argues that the district court erred by denying his motion to vacate the OFP. The district court may modify or vacate an OFP if its subject proves "by a preponderance of the evidence that there has been a material change in circumstances and that the reasons upon which the court relied in granting . . . the order for protection no longer apply and are unlikely to occur." Minn. Stat. § 518B.01, subd. 11(b) (2018). We will not reverse the district court's order denying a motion to vacate an OFP unless the district court abused its discretion. *See Johnson v. Hunter*, 447 N.W.2d 871, 873 (Minn. 1989) ("Vacating an order is a matter vested in a trial court's discretion. . . ."); *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005) (noting that district courts have discretion regarding OFPs). For the following reasons, although we agree that the district court acted outside its discretion, we hold that its error did not prejudice Marohn and cannot be the basis of reversal.

The district court denied Marohn's motion to vacate by relying on the following provision in the OFP statute:

> If the court orders relief under subdivision 6a, paragraph (c), the respondent named in the order for protection may request to have the order vacated or modified if the order has been in effect for at least five years and the respondent has not violated the order during that time.

Minn. Stat. § 518B.01, subd. 11(b). The referenced paragraph authorizes the district court to extend an OFP for up to 50 years. Minn. Stat. § 518B.01, subd. 6a(c) (2018). The district court concluded that, because the OFP against Marohn was effective for only one year, subdivision 11(b) precluded him from seeking its vacation. The conclusion is inaccurate.

Subdivision 11(b) outlines how the subject of an OFP may request its modification or vacation. The portion of subdivision 11(b) relied on by the district court applies only to certain subjects of OFPs—those whose OFPs have been extended under subdivision 6a(c)—and Marohn is not in that class. The district court erred by applying vacation requirements that are irrelevant to Marohn.

Having identified an error, Marohn must show that he suffered prejudice from it to warrant reversal. *See* Minn. R. Civ. P. 61 (requiring that we ignore harmless errors). Marohn identifies no harm from the error.

Marohn could succeed in his motion to vacate the OFP only if he proved by a preponderance of the evidence that a material change in circumstances exists and that the reasons for granting the OFP no longer apply. Minn. Stat. § 518B.01, subd. 11(b). Marohn argues unconvincingly that evidence of a child-protection report and the results of a polygraph examination required the district court to vacate the OFP. Isanti County Family

Services investigated and sent Marohn a findings letter in March 2018 concluding that "there is not a preponderance of the evidence to support a finding of physical or sexual abuse." Marohn also participated in a polygraph examination that he says shows that he told the truth when he denied abusing his son. But the findings letter does not discuss the allegations prompting the investigation or the timeframe of the investigation. More importantly, the district court conducted its own hearing on the issue and was not restrained in its fact-finding role by any investigator's opinion. And "[p]olygraph test results are not admitted in Minnesota civil or criminal actions because there is insufficient evidence of their reliability." *State v. Anderson*, 379 N.W.2d 70, 79 (Minn. 1985). Although the district court received evidence on which one could have concluded that no abuse occurred, it previously found otherwise and issued the OFP based on that finding. It was Marohn's burden to show that circumstances have now changed. He did not make that showing but instead sought to convince the district court that its original finding was wrong. In short, neither the child-protection report nor the polygraph results show that there was a change in circumstances since the time of the OFP. Because Marohn failed to meet his burden of proving a material change in circumstances and the district court's legal error has no bearing on that failure, the error caused no harm to Marohn's motion to vacate.

Marohn argues that the district court erred by misconstruing his requests for an OFP and an HRO as requests for the district court judge to charge Larson with crimes. His pleadings used legal terms ambiguously. He moved the district court to "[c]harge [Larson] with Domestic Abuse under MN §518.01 [sic] restricting unsupervised contact with the minor children for a period of two years," and to "[c]harge [Larson] with Harassment under

MN §609.748 restricting all contact with [Marohn] for a period of five years except parenting issues relayed through a third-party." Liberally construed, however, Marohn's pleadings most reasonably appear to reflect his attempt to follow the district court's prior ruling that any allegations must be addressed in the "parties' family law file." And the remedy Marohn sought seems to have been a family-law order bearing on custody and parenting time, not a criminal penalty. So understood, Marohn's motion and arguments at the hearing cannot fairly be treated as a request for the district court to charge Larson with crimes or to violate the separation of powers. But the misreading of Marohn's motion is not an error that leads to reversal because, again, he does not show that the error prejudiced him.

It is true that Marohn may have met the procedural requirements for filing his own petitions for an OFP and an HRO. The operative statute outlines the procedure and requirements for filing an OFP, including making an allegation of domestic abuse and submitting an affidavit "stating the specific facts and circumstances from which relief is sought." Minn. Stat. § 518B.01, subd. 4 (2018). The HRO statute likewise outlines the procedural duty to "allege facts sufficient to show" harassment, including filing an affidavit and personally serving the respondent. Minn. Stat. § 609.748, subd. 3(a) (2018). But we do not address the issue because Marohn appeals only the district court's order denying his motion in the dissolution file. And he has not shown that any error prejudiced any request properly raised in that matter.

Affirmed.