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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0691**

In the Matter of:

Amber Brook Tobin,
Appellant,

vs.

Richard Glenn Tobin, II,
Respondent.

**Filed November 18, 2019
Reversed and remanded
Rodenberg, Judge**

Scott County District Court
File No. 70-FA-19-5122

Joseph Ambrosion, Kathleen Wheeler, Law Offices of Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for appellant)

Richard G. Tobin, Elko New Market, Minnesota (pro se respondent)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant-wife Amber Brook Tobin challenges the district court's dismissal of her petitions for an order for protection (OFP) without first holding a hearing. Because the

plain language of the OFP statute requires the district court to hold a hearing on the merits of an OFP petition under the circumstances presented here, we reverse and remand.

FACTS

Wife and respondent-husband Richard Glenn Tobin II were married in 2006. Wife and husband initiated a legal separation proceeding and, in June 2018, the district court entered a temporary order in that case. Wife and husband then unsuccessfully tried to reconcile their differences. Wife moved out of the marital home in February 2019.

On March 21, 2019, wife filed a petition for an OFP under Minn. Stat. § 518B.01 (2018). Wife's petition alleged many instances of misconduct by husband, including that husband insisted that wife be affectionate, touched her without her consent, intimidated her with "belittling" and "manipulative" language, refused to leave the home she was occupying during the legal separation, repeatedly called and texted her, forced her to "get naked and let him touch [her] body," and punched a hole in the wall. Wife also alleged that husband had engaged in a pattern of abuse over the previous several years during which he punched walls, broke furniture, and threw objects at wife. Wife indicated that she believed that domestic abuse would continue and that she was in immediate danger. She therefore sought ex parte relief ordering husband to have no contact with her and prohibiting husband from going to wife's home or workplace.

The district court denied wife's request for ex parte relief. In a form order, the district court found that the allegations in the affidavit and petition did not warrant ex parte relief. The district court scheduled an admit/deny hearing on the OFP petition for March 28. A second district court judge presided at the March 28 hearing, ordered a

continuance, and set an evidentiary hearing for April 1 because wife “requested an evidentiary hearing on her denied OFP petition.” A third district court judge ordered another continuance because husband’s attorney was on vacation, and scheduled a new evidentiary hearing for April 8.

On April 3, between the second continuance and the rescheduled evidentiary hearing, wife filed an amended OFP petition. The amended petition alleged mostly the same conduct alleged in the original petition, but the amended petition included more detail than the original petition. The amended petition contained new allegations of specific conduct by husband, such as husband insisting that wife tuck him in at night, husband intimidating wife into sexual activity, and husband “battering” wife about potentially moving out of state. These allegations all concerned husband’s behavior before March 21, 2019. Unlike the original petition, wife indicated in the amended petition that she did not believe the domestic violence would continue or that she was in immediate danger. Wife again sought ex parte relief but also requested that a harassment restraining order (HRO) be issued if an OFP was denied.

In another form order on April 3, a fourth district court judge denied wife’s amended petition for relief by way of either an OFP or an HRO. The district court found that wife’s “affidavit and petition lack merit” and ordered that the petition be dismissed without a hearing.

A fifth district court judge presided at the previously scheduled evidentiary hearing on April 8. Wife’s counsel interpreted the April 3 order as a denial of ex parte relief, but also interpreted it as meaning that the April 8 evidentiary hearing would still be held on the

merits of wife’s petitions. The district court instead construed “all the[] requests to have no contact with Mr. Tobin . . . as a request for a dissolution of the marriage” and suggested that the parties consider converting the previously filed legal-separation proceeding into a dissolution proceeding. Wife’s counsel objected and requested to move forward with the hearing on the merits of wife’s OFP petitions, arguing that those petitions concerned different issues than the issues in the legal-separation case. The district court refused to consider those arguments because the OFP had “already been denied” and “other judges [had] already found [the petitions] deficient.” The judge expressed an inability to see how a hearing on wife’s petitions would move the parties forward. The parties eventually agreed to convert the separation proceeding into a dissolution proceeding, but the hearing ended without the district court having received any evidence or argument concerning wife’s OFP petitions. The district court issued a Domestic Abuse Order for Dismissal because a “dissolution proceeding [was] commenced.”

This appeal followed.

D E C I S I O N

The Minnesota Domestic Abuse Act (the Act), Minn. Stat. § 518B.01, allows victims of domestic abuse to seek relief by way of a petition for an OFP. *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 498 (Minn. 2018). To obtain relief, the petitioner must allege the existence of domestic abuse and state the specific facts and circumstances from which relief is sought. *Id.*; *see also* Minn. Stat. § 518B.01, subd. 4(b).

Under the Act:

“Domestic abuse” means the following, if committed against a family or household member by a family or household member:

- (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[.]

Minn. Stat. § 518B.01, subd. 2(a). We review a district court’s denial of an OFP for abuse of discretion. *See Sweep v. Sweep*, 358 N.W.2d 451, 453 (Minn. App. 1984); *see also McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Thompson*, 906 N.W.2d at 500 (citation and quotation omitted).

Once a petition is filed, the Act directs the district court to schedule a hearing. Minn. Stat. § 518B.01, subd. 5; *Thompson*, 906 N.W.2d at 500 (“[O]nce a petitioner has alleged the existence of domestic abuse, the district court shall order a hearing,” (quotations and alterations omitted)). The court has discretion to grant or deny relief once this hearing is held. *Id.* The timing of this hearing depends on the relief sought and whether the district court grants ex parte relief. Where, as here, the petitioner requests ex parte relief and the court declines to grant it, “a hearing must be held within seven days.” Minn. Stat. § 518B.01, subd. 5(c). The Act’s usage of the word “must” indicates that the district court has no discretion and is required to order a hearing under these circumstances. *See* Minn. Stat. § 645.44, subd. 15a (2018) (providing that the word “must” is mandatory).

Wife would have us hold that the district court must conduct a hearing on every OFP petition that is filed. It is unnecessary for us to so declare in this case. Here, wife alleged in her OFP petitions that husband pressured her into unwanted sexual activity in January 2019 and would “not let [her] leave without undressing in some way for him and or letting him touch [her] body.” Wife also alleged that, in December 2018, husband yelled at her, punched the wall next to the bed where she was lying, followed her into another room, and yelled at her for over an hour. Similarly, wife alleged that, on March 17, 2018, husband broke furniture, threw objects at her head, and got “in [her] face with large objects in hand.” Construing these allegations in the light most favorable to wife, it is evident that wife alleged the existence of domestic abuse within the meaning of the Act. *See* Minn. Stat. § 518B.01, subd. 2(a).

Because wife alleged the existence of facts sufficient to constitute domestic abuse, she requested ex parte relief, and the district court declined to grant ex parte relief, the plain language of subdivision 5(c) required the district court to hold a hearing within seven days before granting or denying an OFP. *See* Minn. Stat. § 518B.01, subd. 5(c). By way of the actions of five different judges, the district court instead continued the matter twice, purported to dismiss wife’s amended petition without a hearing because it “lack[ed] merit[,]” declined to hear argument or receive evidence concerning the OFP petitions during the April 8 hearing, and then dismissed wife’s petition because “a dissolution proceeding [was] commenced.” The dismissal without any hearing on wife’s petition plainly fails to comply with subdivision 5(c) of the Act and was an abuse of the district

court's discretion. *See Schisel v. Schisel*, 762 N.W.2d 265, 272 (Minn. App. 2009) (“The [district] court abuses its discretion if it erroneously applies the law to the case.”).

We reverse the district court's denial of wife's OFP petitions without any hearing and remand the matter to the district court for further proceedings.

Reversed and remanded.