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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1653**

In re the Matter of Kenneth Alan Hovland,
OBO Minor Children,
Respondent,

vs.

Ryan Richard Jazdzewski,
Appellant.

**Filed June 22, 2020
Affirmed
Florey, Judge**

St. Louis County District Court
File No. 69DU-FA-19-460

Terri Port Wright, Port Wright Law Office, Cloquet, Minnesota (for respondent)

Paul T. Shaffer, Shaffer Law Office, Duluth, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Florey, Judge; and John Smith, Judge.*

UNPUBLISHED OPINION

FLOREY, Judge

Following a hearing on and issuance of an order for protection (OFP) against appellant, appellant challenges (1) the district court's granting of respondent's motion for

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

a continuance and (2) the district court's finding that appellant's children were sufficiently fearful of him to warrant the OFP. We affirm.

FACTS

In June 2019, Ryan Jazdzewski had a physical altercation with his wife that resulted in her death. The altercation occurred in their home, which was also the home of their three minor children—all of whom were present in the home at the time of the incident. Jazdzewski was eventually charged with and convicted of second-degree murder.

On the night of the attack, police contacted the children's paternal grandparents—Jazdzewski's parents—and allowed them to take temporary custody of the minor children. Three days later, the children's maternal grandparents were apprised of what had happened and custody of the children was turned over to them and with whom it has remained.

The issue in the instant appeal concerns an emergency ex parte OFP that was issued on June 5, 2019, on behalf of the children. The hearing on whether to grant that OFP was scheduled for June 12, at which time the parties appeared and agreed to continue the matter for 90 days. They agreed to this continuance in order to “allow the criminal case to be sorted out” and “see a direction on where to go in this matter.”

On September 18, 2019, respondent's counsel requested an additional continuance, arguing that they were under the impression that the hearing was not a full evidentiary hearing, but a review of the June 12 continuance and the circumstances that led the parties to agree to that 90-day delay. As a result, respondent argued, they were not prepared to proceed with a full hearing on the OFP. Jazdzewski objected, citing Minn. Stat. § 518B.01,

subd. 5 (2018), as grounds. The court granted respondent’s request for continuance, reasoning that the 13 days requested was reasonable given that the statutory timelines Jazdzewski cited had already lapsed. The court also noted that “all parties need to have a chance to be here with counsel of their choice, fully prepared to proceed.” The hearing was held on October 1, and the court issued the OFP on October 9. On appeal, Jazdzewski argues that the district court did not have the authority to grant respondent’s request for a second continuance and challenges a finding of fact supporting the district court’s issuance of the OFP.

D E C I S I O N

I.

“The decision to grant or deny a continuance falls within the district court’s broad discretion” and will not be disturbed unless the decision was a clear abuse of that discretion. *Gada v. Dedefo*, 684 N.W.2d 512, 513-14 (Minn. App. 2004). “[T]he burden of showing error rests upon the one who relies upon it.” *Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949).

Here, Jazdzewski concedes that the applicable law is not supportive of his position. Nevertheless, he argues that he is entitled to relief because the district court failed to abide by section 518B.01, subdivision. 5(e), which states that the court must hold a hearing on a requested OFP within five days of the date the petition was filed. Jazdzewski acknowledges that this subdivision allows the parties to agree to a different timeframe and that the parties did so here—referring to the first continuance lasting 90 days. But he argues

that the second continuance—that lasted 13 days—was not agreed to and that the court therefore ran afoul of subdivision 5(e) by granting it.

In support of his argument, Jazdzewski cites the supreme court’s 2001 decision in *Burkstrand v. Burkstrand*, 632 N.W.2d 206 (Minn. 2001). While Jazdzewski acknowledges that the *Burkstrand* majority held that there are no jurisdictional consequences to a court’s failure to abide by the timelines in this subdivision, he urges this court to “carefully consider the dissent of Justice Gilbert” and explains why he believes that rationale should prevail here. *Id.* at 213. We are not persuaded.

Pursuant to the express provision in section 518B.01, subd. 5(e), the parties mutually agreed to continue the first hearing for 90 days. Having stipulated to a hearing date beyond the statutory timeframe, the grant of any further continuance on the second-scheduled hearing was a matter within the district court’s discretion, and we cannot conclude that the district court abused that discretion by granting an additional 13-day continuance to account for the reasonable misunderstanding between the parties as to the purpose of the second hearing. *Gada*, 684 N.W.2d at 513-14.

Moreover, even if we were to conclude that the second continuance was a technical violation of the statute, *Burkstrand* made clear that there are no consequences implicating the court’s jurisdiction for violations of the statute, and Jazdzewski has not shown, nor has he attempted to argue, that he suffered any harm or prejudice as a result of the alleged violation. *See Burkstrand*, 632 N.W.2d at 213; *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (“Although error may exist, unless the error is prejudicial, no grounds exist for reversal.”). Finally, to the extent that the analysis proffered by Justice Gilbert in

his *Burkstrand* dissent would compel a different result, that is a dissent—not the controlling law to which we are bound. *State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (“The court of appeals is bound by supreme court precedent . . .”).

II.

Jazdzewski also challenges the OFP on the grounds that a requisite finding of fact was not supported by sufficient evidence. More specifically, he argues that the testimony of a social worker and the children’s maternal grandfather, upon which the district court relied for its findings of fact, did not provide sufficient evidence to support that the children were in fear of imminent harm from him.

We review a district court’s decision to issue an OFP for an abuse of discretion. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). An abuse of discretion occurs where the district court’s findings are “unsupported by the record or [where] it misapplies the law.” *Id.* (quotation omitted). An OFP is justified where the person against whom it is issued “manifests a present intention to inflict fear of imminent physical harm, bodily injury, or assault.” *Id.* at 99.

At the OFP hearing, when counsel asked the social worker who worked with the children after the murder whether the children had expressed fear of their father while in the social worker’s care, he answered in the affirmative. The children’s maternal grandfather, who had custody of and cared for the children after the event, answered a similar question in the affirmative and explained that he believed the children were fearful of their father because they “are deathly afraid of blood They are deathly afraid of dying.” While Jazdzewski argues that this testimony alone is insufficient evidence for the

district court to have found as it did, we need not consider whether this testimony could be sufficient in and of itself, because the testimony is not the only evidence upon which the district court relied.

In addition, the district court had before it, per an agreement between the parties, a copy of the criminal complaint for the case in which Jazdzewski was charged with the murder of his wife. The complaint alleged a number of disturbing facts. For example, when responding officers approached Jazdzewski's house, they observed his seven-year-old daughter exit the residence with "blood on her shirt and shorts, as well as blood all over her arms and legs." She approached the officers until Jazdzewski, who "was also covered in blood," followed her outside, at which point she ran back to him and said to the officers "don't kill him." The seven-year-old told the officers that her parents had been fighting and that "she is dead"—referring to her mother. Officers found the children's mother on the kitchen floor surrounded by blood on the floor and walls with "multiple stab wounds on her torso." The complaint also alleged that Jazdzewski later estimated he stabbed his wife 10 to 12 times and that he only stopped because his older daughter, who was in the kitchen during the stabbing, said "don't kill mom." Finally, in addition to the testimony and the criminal complaint, the district court based its finding that the children were in fear of imminent harm on an adverse evidentiary inference drawn, at the request of counsel, from Jazdzewski's election to plead his Fifth Amendment Right against self-incrimination and refusal to answer any substantive questions as to the events of that day.

In the section of his brief arguing that the district court had insufficient evidence to find that the children feared imminent bodily harm from him, Jazdzewski does not address

the district court's use of the criminal complaint or the adverse evidentiary inference in its rationale. Given that the district court based its factual finding on (1) a criminal complaint to which Jazdzewski stipulated—wherein at least two of his children either watched him repeatedly stab their mother or witnessed the scene shortly after the fact; (2) Jazdzewski's refusal to answer questions in a non-criminal proceeding; and (3) testimony, which was found credible, from two individuals who had close contact with the children after their father murdered their mother; we cannot conclude that the district court abused its discretion in finding that Jazdzewski's children were fearful of imminent physical injury or bodily harm from him.

Affirmed.