STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0217

In the Matter of: Holly Elizabeth Often, o/b/o Minor Children, petitioner,
Respondent,

vs.

Nathan Marsh Dornquast,
Appellant.

Filed August 3, 2020
Affirmed
Hooten, Judge

Ramsey County District Court
File No. 62-DA-FA-19-1485

Hennepin County District Court
File No. 27-DA-FA-20-1154

Eva F. Wailes, Wilson Law Group, Minneapolis, Minnesota (for respondent)

Eric C. Nelson, Minneapolis, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Hooten, Judge.

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

HOOTEN, Judge

Appellant father challenges the district court's order granting the respondent mother's petition for an order for protection (OFP) on behalf of their two daughters. Appellant argues that the district court erred by: (1) finding that his use of corporal

punishment constituted domestic assault against his daughters, (2) limiting evidence at the OFP hearing of the daughters' past misbehavior, and (3) issuing the OFP. For the first time on appeal, appellant also argues that the district court violated his due process rights. We affirm because the district court did not commit clear error or abuse its discretion.

FACTS

The facts are mostly undisputed. Appellant Nathan Dornquast and respondent Holly Often divorced in 2008 and thereafter shared legal and physical custody of their two daughters. Sometime in 2018, Dornquast became concerned about the daughters' alleged drug use. During the fall of 2019, he was also concerned that the daughters were missing school, their grades were declining, and one daughter had been caught with drug paraphernalia in her backpack. Dornquast attempted various disciplinary measures, including grounding the daughters and restricting visits with their friends.

On December 2, 2019, the daughters were together in a room at Dornquast's house, when he knocked on the door to ask a question. Upon opening the door, Dornquast smelled marijuana and saw a vape charger. The daughters denied knowing anything about the vape charger. Dornquast testified at the OFP hearing that he spent 15 minutes "begging" them to confess then warned: "[Y]ou know we've talked about using the belt previously . . . . I don't want to have to do this but I will do it."

Dornquast instructed the daughters to dress in underwear and meet him in the guest bedroom. He testified to the district court that he "whacked" his hand with the belt a few times, "making sure they could hear it" and "trying to find some point where it could sting

without really hurting." He did not want to "get laughed at" but also wanted to "cause a sting with a snap."

Dornquast instructed his daughters to bend over the bed. He testified that he "gave them each a little whack with the belt." The older daughter told the younger daughter to "come clean," and Dornquast proceeded to "whack" the younger daughter again, ultimately hitting her with the belt a total of four to five times. During the incident, the daughters felt "scared." The belt left swollen red lines across each daughter's behind, which developed into bruises over the following days.

The younger daughter then admitted that the vape charger belonged to her, and Dornquast found additional vaping paraphernalia in her backpack. He told the younger daughter to stand on the bed, photographed the marks on her behind, and forwarded the photograph by text to Often. He admits that he then "whacked" the younger daughter on the face.

Often moved the district court for an OFP on behalf of her daughters. At the evidentiary hearing, Dornquast argued that his use of force was a justifiable disciplinary measure. The district court disagreed, finding that Dornquast had "committed acts of domestic violence against [both of the daughters]." The district court explained:

> It is clear both from the testimony of the girls, which I find to be completely credible, as well as the photographic evidence that Mr. Dornquast in striking the children with a leather belt went well beyond any form of corporal punishment that is allowed either by statute or case law . . . causing injury to both girls. There [are] visible welts, raised skin, swelling, and bruising on the site of the injuries . . . . That is not discipline, that is abuse.

The district court "did not find [Dornquast's] description of his use of force to be credible." The district court further found "that both of the girls are of slight stature" and the strikes they received went beyond "moderate discipline."

Based on its findings, the district court issued an OFP for two years. The OFP prohibited Dornquast from contact with either daughter except, upon completion of parenting education, weekly four-hour supervised visits. At the hearing, when Dornquast's attorney stated that "whatever is ordered here today on a temporary basis could be modified in family court," the district court responded affirmatively. Dornquast did not object to the parameters of the district court's order at the hearing or request a more lenient order, such as a reduced length of time that the OFP would remain in effect. Dornquast now appeals the OFP.

D E C I S I O N

Given the nature of Dornquast's arguments, we first emphasize the principles that govern our review. As an appellate court, our purpose is to correct errors, not retry cases. *See Turner v. Alpha Phi Sorority House*, 276 N.W.2d 63, 68 n.2 (Minn. 1979) ("The purpose of appellate review is to determine whether the trial court made an error and not to try the case de novo."). We do not reweigh the evidence or find new facts. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

I. The district court did not commit clear error when it found that father had committed domestic abuse.

Dornquast's primary argument is that his use of force was reasonable and, therefore, the district court's finding of domestic abuse was clearly erroneous. The findings

underlying a decision to issue an OFP are reviewed for clear error. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). We view the record in the light most favorable to the findings and will reverse those findings only if "left with the definite and firm conviction that a mistake has been made." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). We give considerable deference to the district court's findings on witness credibility. *In re Welfare of L.A.F.*, 554 N.W.2d 393, 396 (Minn. 1996).

The Minnesota Domestic Abuse Act provides that an OFP may be issued if domestic abuse has occurred. Minn. Stat. § 518B.01, subd. 4 (2018). "Domestic abuse" includes "physical harm, bodily injury, or assault," as well as "the infliction of fear of imminent physical harm, bodily injury, or assault." *Id.*, subd. 2(a) (2018). Ample caselaw has affirmed findings of domestic abuse on facts similar to those presented by this record. *See Aljubailah ex rel. A.M.J. v. James*, 903 N.W.2d 638, 642–43 (Minn. App. 2017) (affirming finding of domestic abuse and issuance of an OFP when a father admitted striking his son with a belt and photographs showed bruising); *Oberg v. Bradley*, 868 N.W.2d 62, 63, 66 (Minn. App. 2015) (affirming OFP based on two incidents of spanking); *Gada*, 684 N.W.2d at 515 (affirming an OFP based on testimony that father kicked mother in the back and twisted her arm).

It is undisputed that Dornquast struck both of his daughters with a leather belt, leaving visible welts, raised skin, and swelling. Both daughters testified that they felt "scared" during the incident. Dornquast admitted that he wanted the belt to "sting." Although he testified that he did not intend for his actions to cause injury, the district court

did not find this testimony to be credible. Dornquast has not shown that the district court's findings of fact are clearly erroneous.

Dornquast argues that he is entitled to a defense of the authorized use of force provided in the criminal code. Minnesota criminal statutes state that "reasonable force may be used upon or toward the person of another . . . when used by a parent . . . of a child . . . in the exercise of lawful authority, to restrain or correct such child." Minn. Stat. § 609.06, subd. 1(6) (2018). But the district court expressly found that Dornquast's use of force was unreasonable.[1] The district court expressly found that: (1) Dornquast's actions were "not justified as reasonable physical discipline," (2) the "force used was not moderate but was rather excessive," (3) his actions "went well beyond any form of corporal punishment that is allowed either by statute or case law," and (4) such actions constitute abuse, not discipline. The district court found that Dornquast's use of force was unreasonable under the circumstances, and this finding is supported by the record.

II. The district court did not abuse its discretion when it limited the evidence available at the OFP hearing.

Dornquast argues that the district court should not have limited evidence of the daughters' past misbehavior, contending that such evidence is relevant to the issue of

[1] Before the district court, Dornquast cited *In re Welfare of Children of N.F.* to support the proposition that his use of force was reasonable as a matter of law. 735 N.W.2d 735, 738–39 (Minn. App. 2007), *aff'd in part, rev'd in part*, 749 N.W.2d 802 (Minn. 2008). The district court distinguished *N.F.* because the daughters are of slight statute, in contrast to the 195-pound children described in *N.F.*, and the discipline imposed by appellant was more severe than the discipline at issue in *N.F.* *See N.F.*, 735 N.W.2d at 737, 739 (describing spankings with a wooden paddle using "moderate force" with no evidence of injury in a juvenile protection proceeding). The parties do not cite *N.F.* on appeal.

whether his use of force was reasonable. He also raised this objection at the evidentiary hearing.

"District courts have broad discretion to admit or exclude evidence on a number of grounds, including relevance." *Rew v. Bergstrom*, 845 N.W.2d 764, 788 (Minn. 2014). "[T]his court will not disturb an evidentiary ruling unless it is based on an erroneous view of the law or is an abuse of that discretion." *Aljubailah ex rel. A. M. J.*, 903 N.W.2d at 644.

The district court ruled: "You can focus on any misbehavior that occurred on December 2nd or that weekend but we're not going to . . . go through everything that's happened. We're going to focus on the allegations in the petition and what is going on there." Accordingly, the district court excluded school attendance records and testimony that one of the daughters had stolen the keys to her grandmother's condominium sometime in early 2019.

Yet, the district court did allow substantial testimony regarding the girls' behavior over the fall semester of 2019, including testimony of marijuana use, absences from school because of drug use, declining grades, and incidents in which one daughter was caught with drug paraphernalia in her backpack. Thus, notwithstanding the district court's ruling, Dornquast elicited ample testimony to illustrate his concerns with his daughters' alleged drug use. He also elicited testimony regarding other disciplinary measures he had attempted to use in the past. Even assuming that he was entitled to a reasonableness defense—a proposition that he has not established—the record shows that any additional evidence of past misbehavior would not have influenced the district court's findings and conclusions. *See Rew*, 845 N.W.2d at 788 ("In making its decision to exclude the evidence,

the court effectively decided that the testimony would have no effect on its decision about whether to issue the extended OFP.").

III. The district court did not abuse its discretion when it issued the OFP.

Dornquast further contends that, even if his actions qualify as domestic abuse, the district court abused its discretion by issuing an OFP. However, his brief simply restates his arguments that the district court should not have found domestic abuse, stating that he had a "rational justification" for corporal punishment.

"We review a decision to grant an OFP for an abuse of discretion." *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). "A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law." *Pechovnik*, 765 N.W.2d at 98.

As set forth above, the district court's findings are supported by the record. Dornquast cites to no authority to show that the district court misapplied the law when it issued an OFP after finding that Dornquast used unreasonable force against the daughters. Therefore, we conclude that the district court did not abuse its discretion by issuing an OFP.

IV. Dornquast has forfeited his due process argument.

Finally, Dornquast argues for the first time on appeal that the district court violated his procedural and substantive due process rights because: (1) the district court did not appoint a guardian ad litem[2] and (2) the district court should have made more particularized

[2] Chapter 518B does not expressly require appointment of a guardian ad litem for an OFP proceeding. Dornquast relies on Minn. Stat. § 518.165, subd. 2 (2018), which governs

findings to support its order. But Dornquast neither raised any due process argument before the district court, requested the appointment of a guardian ad litem, nor challenged the particularity of the findings before the district court. Constitutional issues may not be raised for the first time on appeal. *St. Aubin v. Burke*, 434 N.W.2d 282, 284 (Minn. App. 1989), *review denied* (Minn. Mar. 29, 1989). Moreover, Dornquast does not cite any authority, or provide any analysis, to support his contention that the statute or the district court's application of the statute violated his due process rights in any specific respect. "A party who inadequately briefs an argument waives that argument." *Brodsky v. Brodsky*, 733 N.W.2d 471, 479 (Minn. App. 2007). Accordingly, we decline to address Dornquast's due process arguments.

Affirmed.

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custody proceedings, but he does not explain why this requirement should apply to a proceeding under *Chapter 518B*. Because the Minnesota Supreme Court has distinguished Chapter 518B from Chapter 518, *Baker v. Baker*, 494 N.W.2d 282, 285–86 (Minn. 1992), Dornquast presents a significant issue of statutory interpretation without providing any analysis of the statutory language at issue. Although he cites cases issued by this court, all of those cases were decided before the supreme court issued *Baker*. *See J.E.P. v. J.C.P.*, 432 N.W.2d 483 (Minn. App. 1988); *Johnson v. Smith*, 374 N.W.2d 317 (Minn. App. 1985).