

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0055**

In re the Matter of: Gerardine Wiggins,
Respondent,

vs.

Roger Wiggins,
Appellant.

**Filed October 11, 2021
Affirmed
Bryan, Judge**

Hennepin County District Court
File No. 27-DA-FA-20-4517

Allison Maxim, Maxim Smith Family Law PLLC, St. Paul, Minnesota (for respondent)

John Barragry, Miller & Stevens, P.A., Forest Lake, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Bryan, Judge; and Frisch,
Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this appeal from the district court's issuance of an order for protection (OFP), appellant argues that there is insufficient evidence to support the district court's finding of domestic abuse and that the district court failed to consider the relevant circumstances surrounding these acts of abuse. First, we conclude that the record supports the district court's finding that appellant committed acts of domestic abuse. Second, we conclude that

the district court conducted the appropriate analysis regarding the timing, frequency, and severity of the acts of domestic abuse. We affirm the district court's decision.

FACTS

Appellant-husband Roger Wiggins and respondent-wife Gerardine Wiggins were married in 1976. On August 18, 2020, wife petitioned for an ex parte OFP against husband. Because the petition did not allege an immediate and present danger of domestic abuse, the district court denied the request for ex parte relief and scheduled a hearing. At the hearing on September 3, 2020, the district court received testimony from husband, wife, and their two adult sons. Following the hearing, the district court issued an emergency OFP and ordered husband to surrender his firearms. On November 19, 2020, the district court issued the OFP and husband appeals. Given the issues on appeal, we summarize the evidence presented and the district court's order.

At the evidentiary hearing, wife testified regarding the most recent incident of domestic abuse in 2020 and husband's history of domestic abuse. During an argument in July 2011, husband picked up a can of soda and threw it at wife's head. The can hit wife in the eye, cut her eyelid, and caused bleeding and a black eye. Wife still has a scar from the incident. In August 2011, husband shoved wife into the kitchen counter. Wife left the house, but when she returned, husband was enraged. He jumped on top of her, held her down, screamed at her, and continually spit in her face. In November 2011, wife was recovering from foot surgery when husband jumped on top of her and held her down while he hit her. Wife screamed and lost control of her bladder. After husband let her up, wife went to the bathroom. Husband followed wife into the bathroom, put his hand on her face,

and pushed her head into the wall, bruising her right cheek. Wife left the bathroom and went into the laundry room. Husband then pushed wife against the wall, put both hands on her throat, and started squeezing. Wife testified that she thought she was going to die. Wife also provided photos of the incident, showing her bruises. Wife testified that she never told anyone about these incidents because she was afraid that husband would lose his job.

In the summer of 2020, husband's abusive behavior again began escalating. Wife testified that husband routinely got angry, screamed at her, and threw things on a daily basis from March through July 2020. He also ripped her pajamas and grabbed her arms during this time. On July 28, 2020, husband was in a rage and acting completely irrationally. Wife testified that she "thought he was going to hurt [her] if he caught [her]." Wife called her adult son and asked him to help her get out of the house. The son testified that wife was crying and sounded terrified. Both adult sons arrived at the residence and husband started screaming at them. Wife went inside, packed some belongings, and called the police. According to wife, husband "was completely irrational, saying things that made no sense," "was furious," and "very paranoid." When the police arrived, husband was sitting in the garage in his underwear. After the incident, wife left the house and went to her adult son's home where she has remained. Wife testified that she was "terrified" of husband on that day.

The district court found wife's "affidavit and oral testimony to be credible, and [husband's] testimony to be less credible with respect to [wife's] allegations of domestic abuse." In addition, the district court summarized the testimony presented and the

statements that wife made in the petition. The district court began its description by noting that wife “testified in her affidavit and at the hearing about the most recent incident of domestic abuse, as well as [husband’s] history of domestic abuse.” The district court then went through wife’s detailed accounts of the incidents in 2011, the July 28, 2020 incident, the months leading up to the July 28, 2020 incident, and husband’s conduct following July 28, 2020. The district court found that wife still has a scar from the domestic abuse in 2011 and that wife was currently terrified that husband was going to kill her and then kill himself. Further, the district court recounted evidence regarding husband’s unwillingness to enter treatment for substance abuse, his lack of awareness concerning the negative impact of mental health problems or substance abuse, and his lack of coping skills to address his mental health or prevent relapse. Ultimately, the district court found that wife “has sufficiently established that domestic abuse as defined by Minn. Stat. § 518B was committed against her by [husband].” The district court also concluded that wife “met her burden of proof.” The district court issued the OFP, and husband appeals.

DECISION

I. Finding that Husband Committed Acts of Domestic Abuse

Husband argues that the evidence presented does not support a finding of domestic abuse. Because we are not left with the definite and firm conviction that a mistake has been made, we conclude that the district court did not clearly err in finding that domestic abuse occurred.

The Domestic Abuse Act governs the issuance of an OFP. Minn. Stat. § 518B.01 (2020). The statute provides that a district court may issue an OFP upon a finding of

domestic abuse. *Id.*, subds. 4, 6. “[I]f committed against a family or household member by a family or household member,” domestic abuse includes “physical harm, bodily injury, or assault.” *Id.*, subd. 2(a)(1). To satisfy this definition, “a petitioner need only show that ‘physical harm, bodily injury, or assault’ has actually occurred, regardless of *when* it occurred.” *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). In addition, the acts of domestic abuse also include inflicting “fear of imminent physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a)(2). This definition does not require an “overt physical act” and may “be inferred from the totality of the circumstances, including a history of past abusive behavior.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). An OFP petitioner has the burden of proving that domestic abuse occurred by a preponderance of the evidence. *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015).

“We review the district court’s findings of fact for clear error.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). In doing so, “[w]e neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.” *Id.* “We review the record in the light most favorable to the district court’s findings, and we will reverse those findings only if we are left with the definite and firm conviction that a mistake has been made.” *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006) (quotation omitted).

In this case, the district court found that wife’s testimony was more credible than husband’s and that based on wife’s testimony, domestic abuse occurred in 2011 and in 2020. The record supports this finding. Wife testified that, in 2011, husband physically

abused her by committing the following acts: (1) throwing a can of soda at her head, which cut her eyelid, and caused bleeding and a black eye in July 2011; (2) shoving her into the kitchen counter in August 2011; (3) holding her down and hitting her until she lost control of her bladder in November 2011; and (4) pushing her against the wall and choking her in November 2011. Each of these acts fits the definition of domestic abuse. Husband challenges the district court findings regarding his conduct in 2011, arguing that the district court erred because wife did not report any of the incidents. We are not convinced by husband's argument because petitioners need not report an incident of domestic abuse to obtain an OFP. In addition, wife testified that she chose not to report the incidents out of a concern that husband would lose his job. Viewing this evidence in the light most favorable to the district court's findings, we are not left with the definite and firm conviction that the district court made a mistake in its finding that, pursuant to section 518B.01, subdivision 2(a)(1), husband committed acts of abuse against wife in 2011.

We reach a similar conclusion regarding the district court's finding that husband committed an act of domestic abuse in 2020. Husband argues that the name calling and irrational behavior he displayed on July 28, 2020, does not satisfy the statutory definition of domestic abuse. Husband's characterization, however, does not accurately reflect the evidence presented, which included evidence of wife's fearful reaction to husband's conduct. The testimony showed that husband's behavior began escalating for months prior to the incident. Wife testified that husband got angry, screamed at her, threw things, ripped her pajamas, and grabbed her arms during this time period. When husband acted like this, wife was afraid he would hurt her. More specifically, wife testified that on July 28, 2020,

husband was “completely irrational,” “furious,” and “very paranoid.” She was “terrified” that husband “was going to hurt [her] if he caught [her].” This evidence supports a finding that an act of domestic abuse occurred pursuant to section 518B.01, subdivision 2(a)(2), when husband inflicted fear of imminent physical harm, bodily injury, or assault on July 28, 2020.

II. Consideration of Circumstances Surrounding the Acts of Domestic Abuse

Husband argues that the district court abused its discretion because it failed to analyze all relevant circumstances when deciding to issue the OFP. This argument, however, mischaracterizes the district court’s analysis and the applicable law. We discern no error by the district court.

Under the Domestic Abuse Act, a district court may issue an OFP upon a finding of domestic abuse. Minn. Stat. § 518B.01, subds. 4, 6. Once a district court determines that domestic abuse has been established, it “may examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP.” *Thompson*, 906 N.W.2d at 500. “Relevant circumstances may include, but are not limited to, the timing, frequency, and severity of any alleged instances of ‘domestic abuse,’ along with the likelihood of further abuse.” *Id.* This court reviews the decision to grant an OFP for an abuse of discretion. *Id.* A district court abuses its discretion when its decision is against logic or the established facts in the case. *Id.*

Here, husband argues that the district court failed to fulfill its obligation to conduct a detailed analysis regarding the circumstances of the acts of domestic abuse. We are not convinced for two reasons. First, this argument mischaracterizes the applicable law.

Husband relies on *Thompson* and *Sobiech v. Sobiech*, No. A19-1928, 2020 WL 3042133, at *2 (Minn. App. June 8, 2020), for the proposition that once the district court finds that domestic abuse occurred, it must then analyze the circumstances regarding the acts of abuse before issuing an OFP. We note that *Sobiech* is unpublished and does not constitute precedent. *Gen. Cas. Co. of Wis. v. Wozniak Travel, Inc.*, 762 N.W.2d 572, 575 n.2 (Minn. 2009). In addition, we did not interpret *Thompson* to require this additional step. Instead, *Thompson*, *Sobiech*, and section 518B.01 use the discretionary term “may” not the obligatory term “must.” Minn. Stat. § 518B.01, subd. 6(a) (stating that “the court may provide relief”); *Thompson*, 906 N.W.2d at 500 (stating that “once ‘domestic abuse’ has been established, the district court may examine all of the relevant circumstances” and that “may” is discretionary); *Sobiech*, 2020 WL 3042133, at *2-3. Thus, while it may be preferable for the district court to conduct a detailed analysis weighing the relevant circumstances, we disagree with husband’s interpretation of *Thompson* and decline to adopt that interpretation in this case.

Second, husband’s argument also mischaracterizes the district court’s order. Contrary to husband’s argument, the district court made detailed findings regarding the timing, frequency, and severity of the alleged instances of abuse, as well as the likelihood of future abuse. For instance, the district court detailed wife’s account of the incidents in 2011, the months leading up to July 28, 2020, husband’s conduct on July 28, 2020, and husband’s conduct after July 2020. In addition, the district court analyzed the severity of the acts of abuse, finding that wife still has a scar, presented evidence of bruising, and presently expressed a fear that husband was going to kill her. Finally, the district court

emphasized husband's unwillingness to enter treatment for substance abuse, his lack of awareness concerning the impact of his substance abuse, and his lack of ability to prevent relapse, all of which relate to the likelihood of further abuse. Given these findings, we conclude that the district court did in fact consider the circumstances of the domestic abuse before it issued the OFP.

Affirmed.