

*This opinion is nonprecedential except as provided by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**

A21-0177

A21-0178

In the Matter of:

Xiaoyan Sun, petitioner,
Respondent,

vs.

Qiang Yang,
Appellant,

and

In the Matter of:

Qiang Yang, and OBO minor children, petitioner,
Appellant,

vs.

Xiaoyan Sun,
Respondent.

Filed December 20, 2021

Affirmed

Smith, Tracy M., Judge

Ramsey County District Court
File Nos. 62-DA-FA-20-451, 62-DA-FA-20-507

Lucas J.M. Dawson, Halberg Criminal Defense, Bloomington, Minnesota (for respondent)

Edward R. Shaw, Brainerd, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Slieter, Judge; and Gaitas, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In these consolidated appeals, appellant Qiang Yang challenges the district court’s grant of an order for protection (OFP) sought by his estranged wife, respondent Xiaoyan Sun, and the district court’s denial of his petition for an OFP against Sun. Yang argues that the district court erred by denying his postdecision motions for a new trial and for amended findings. Yang also argues that the district court’s orders granting and denying the OFP petitions are not supported by the evidence. Finally, Yang challenges the limitations on his parenting time imposed by the district court as part of the OFP against him. We affirm.

FACTS

Sun and Yang are married and have two children, born in 2014. On April 22, 2020, Yang called the police to Sun and Yang’s home following an incident that occurred in the presence of the children while the children were playing outdoors. Sun reported that Yang had become angry with her and pushed her, and Yang denied it and claimed that Sun had “dragged” the children away from him. The following week, following petitions filed by both parties, the district court granted Sun an ex parte OFP against Yang and denied Yang’s request for an ex parte OFP against Sun.

The district court thereafter held a series of hearings in which it heard from the parties and other witnesses regarding Sun and Yang’s relationship as well as the specific events of April 22. The testimony from Sun and her witnesses included accounts that Yang

had been violent toward Sun in the past and that Yang had disparaged Sun to their children and had told them to falsely report that Sun had hurt them. Yang denied these accounts and claimed that Sun abused the children and that he was very scared of her.

On October 9, the district court granted Sun's petition for an OFP against Yang and denied Yang's petition for an OFP against Sun. The district court stated that it found Sun's testimony credible and Yang's testimony not credible. The district court also ordered Yang's parenting time to be limited, supervised, and conducted in English if the supervisor does not speak Mandarin Chinese.

Yang filed postdecision motions in both cases, requesting that the district court "set[] aside" its factual findings, conclusions of law, and orders. In his motions, Yang requested a new trial and that the district court amend its findings of fact based on the introduction of what Yang alleged was newly discovered evidence. With respect to the OFP against him, Yang also alternatively requested modifications to the order regarding Yang's parenting time. On December 11, the district court denied these motions in their entirety.

Yang appealed the district court's denial of both motions. This court consolidated the appeals. Following informal briefing, a special-term panel of this court issued an order determining that the December 11 order was not appealable. The special term panel construed the consolidated appeals as being taken from the district court's October 9 orders granting and denying the petitions for the OFPs. The special-term panel also concluded that Yang's appeals are not untimely because Yang's postdecision motions, while not appealable, nevertheless tolled the time to file an appeal.

DECISION

I. The district court did not abuse its discretion by denying Yang's postdecision motions.

Yang first argues that the district court erred by denying his postdecision motions for a new trial and for amended findings. An appellate court reviews a district court's decision on a motion for a new trial or for amended findings for an abuse of discretion. *Christie v. Estate of Christie*, 911 N.W.2d 833, 838 (Minn. 2018); *Landmark Cmty. Bank, N.A. v. Klingelzhutz*, 927 N.W.2d 748, 754 (Minn. App. 2019).

As for the district court's denial of Yang's motion for a new trial, this court, as noted above, already issued an order determining that the district court's December 11 order denying the motion for a new trial is not appealable. We made that decision because a motion for a new trial is not authorized in a domestic-abuse proceeding. *See Steeves v. Campbell*, 508 N.W.2d 817, 817-18 (Minn. App. 1993) (concluding that domestic-abuse proceedings are "special proceedings" in which motions for new trial are not authorized). Instead, appeal must be taken from the original order or judgment. *Id.* Because a motion for a new trial is not authorized in a domestic-abuse proceeding, a district court cannot abuse its discretion by denying such a motion.

Yang argues, though, that this court could not have accepted jurisdiction over his appeals unless we believed that his motion for a new trial was meritorious. He contends that our special-term panel decision would otherwise be incomprehensible. The argument is incorrect. Our special-term panel accepted review of the district court's OFP decisions on the ground that Yang's postdecision motions properly tolled his time to appeal,

regardless of the substantive merit of those motions. *See Madson v. Minn. Mining & Mfg. Co.*, 612 N.W.2d 168, 172 (Minn. 2000) (holding that a postdecision motion may toll the time for appeal even if the motion lacks merit). The special-term panel did not address the merits of the postdecision motions.¹

As for the district court's denial of Yang's motion for amended findings, Yang argues that the district court should have granted his motion based on new evidence. But "a motion for amended findings must be based on the record previously submitted to the district court, and the district court may neither go outside the record, nor consider new evidence when addressing the motion." *Cook v. Arimitsu*, 907 N.W.2d 233, 237 (Minn. App. 2018) (quotation omitted), *rev. denied* (Minn. Apr. 17, 2018). Because the district court cannot consider new evidence when addressing the motion, the district court did not abuse its discretion by denying Yang's motion for amended findings.

II. The district court did not abuse its discretion by granting Sun an OFP against Yang and denying Yang an OFP against Sun.

Yang next argues that the district court did not have sufficient evidence to support its decisions to grant an OFP against him and to deny his petition for an OFP against Sun.

"[Appellate courts] review the decision to grant an OFP for an abuse of discretion. A district court abuses its discretion when its decision is based on an erroneous view of the

¹ For her part, Sun argues that this court lacks jurisdiction to consider Yang's appeals because they were untimely. Because the special-term panel already determined that Yang's postdecision motions tolled the appeal period and that this court has jurisdiction to consider the consolidated appeal, Sun's argument also amounts to an impermissible petition for rehearing. *See* Minn. R. Civ. App. P. 140.01. Thus, Sun's jurisdictional argument fails.

law or is against logic and the facts in the record.” *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018) (quotation and citation omitted).

The district court’s grant and denial of the respective petitions for OFPs were based on its findings of fact made after evidentiary hearings. “Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Minn. R. Civ. P. 52.01.

[I]n our review of an OFP, 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. . . . [W]e neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.

Pechovnik v. Pechovnik, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations and citations omitted); see *In re Civil Commitment of Kenney*, 963 N.W.2d 214, 221-23 (Minn. 2021) (addressing clear-error standard of review).

The record in these cases contains testimony from both parties and from several witnesses. Sun testified that, on April 22, Yang became angry when she joined him and the children outside and that he pushed her when she approached one of the children who had started crying. She testified that, in the past, Yang had broken several items in the home in anger, had choked her, and had slapped her. Sun also testified that Yang exhibited controlling behavior, including ordering her to wear certain clothes and forcing to her purchase \$500 phone cards that he would then cut up. She testified that Yang exhibited similar controlling behavior toward the children. Additionally, Sun testified that Yang told

the children that she was “a liar, a b*tch, and a murderer.” Several of Sun’s neighbors and colleagues testified, largely corroborating her testimony.

Yang also testified, denying that he had pushed Sun on April 22. He testified that Sun forcefully took the children from him and “dragged” them to the garage. He also testified that it was Sun who had broken items throughout the home. He denied Sun’s allegations that he had been violent toward her. Yang testified that he filed for an OFP against Sun because he was “very scared” of her and that she “abuse[d]” the children. Yang’s mother testified from China, largely corroborating Yang’s testimony, with several inconsistencies.

Regarding the April 22 incident, a neighbor testified that he saw Yang shove Sun “really hard.” The neighbor also testified that he witnessed Yang tell the children, “When the police get here use your English to tell them that your mother’s bad.” Another neighbor testified that she observed Yang tell the children to tell the police, “Mommy hurt me.” The responding officer testified that Sun and the children appeared “scared.”

Yang argues that this record is insufficient to support the district court’s findings. With respect to the district court’s grant of an OFP, Yang argues that the evidence was “undermined by the Respondent’s own descriptions of the events, too general, or too remote to sustain a finding that the Appellant was an imminent threat.” To support his argument, Yang restates a large portion of the account of events that he provided in the evidentiary hearing. Yang makes similar arguments in his appeal challenging the district court’s denial of his petition for an OFP against Sun. He argues that the various witnesses’

testimony was “untrue, exaggerated, or evidence of the Respondent’s own behavior” and that the court was inconsistent in its determinations of credibility.

These arguments are unavailing. At bottom, all of them challenge the district court’s determinations of witness credibility, and we defer to those determinations. *See Pechovnik*, 765 N.W.2d at 99.

Yang also argues that the district court abused its discretion by not amending its factual findings based on the affidavit and exhibits that he offered in his postdecision motions. As described above, however, Yang’s postdecision motion for amended findings does not allow for the submission of new evidence.

In sum, because Yang fails to establish that the evidence is insufficient to support the district court’s findings, the district court did not abuse its discretion by granting Sun’s petition for an OFP against Yang and denying Yang’s petition for an OFP against Sun.

III. The district court did not abuse its discretion in its order regarding Yang’s parenting time.

Yang next argues that the district court erred by limiting his parenting time.

Under the Minnesota Domestic Abuse Act, a court may

award temporary custody or establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children. In addition to the primary safety considerations, the court may consider particular best interest factors that are found to be relevant to the temporary custody and parenting time award.

Minn. Stat. § 518B.01, subd. 6(a)(4) (2020). The district court has broad discretion in making custody and parenting-time determinations. *Matson v. Matson*, 638 N.W.2d 462,

465 (Minn. App. 2002). When appellate courts review parenting-time awards made in an OFP, we do so “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.” *Pechovnik*, 765 N.W.2d at 99 (quotations omitted).

In the OFP against Yang, the district court established a schedule for Yang’s parenting time, required that his parenting time be supervised, and directed that, unless the supervisor speaks Yang’s native language of Mandarin Chinese, the parenting visits be conducted in English.

Yang argues that the district court abused its discretion because it made no specific findings of how he was a danger to the children. He also argues that limiting the children’s access to him is not in their best interests. Finally, Yang asserts that the court’s ruling “seriously threatens the children’s cultural upbringing” because it “cuts [the children] off” from his heritage and native language.

We discern no abuse of discretion. The district court found that, “for the safety of [Sun]” and “the children’s best interest[s],” Yang’s parenting time should be supervised and in English unless the supervisor speaks Mandarin. The district court noted Sun’s testimony, which it found credible, included allegations that Yang had been violent toward her and also that Yang told the children in Chinese that Sun is a “liar, a b*tch, and a murderer” and that they should lie to the police about the April 22 incident. The district court also noted Sun’s concern that Yang would continue this type of behavior if he were awarded unsupervised parenting time. The district court’s findings are supported by the record, and those findings support the district court’s determinations that the safety of Sun

and the best interests of the children warrant the limitations placed on Yang's parenting time.

Finally, contrary to Yang's assertions, the limitations do not threaten the children's cultural upbringing. The district court's order does not prohibit Yang from speaking Mandarin Chinese when the visitation supervisor speaks that language; it simply attempts to ensure meaningful supervision of Yang's parenting time by requiring Yang to speak English when the supervisor does not speak Mandarin.

Affirmed.