

*This opinion is nonprecedential except as provided by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
A21-0506**

In re the Matter of:
Gina Ann LaBlanc, and on behalf of Minor Children,
Respondent,

vs.

Phillip Homere,
Appellant.

**Filed January 24, 2022
Affirmed
Halbrooks, Judge***

Koochiching County District Court
File No. 36-FA-21-101

Benjamin Kaasa, Benjamin Kaasa Law Office, PLLC, Duluth, Minnesota (for respondent)

Gerald K. Wallace, Wallace Law Firm, PLLC, Duluth, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Frisch, Judge; and Halbrooks,
Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant argues the district court abused its discretion in granting an order for protection (OFP) as to both respondent and the parties' joint child.¹ We affirm.

FACTS

Appellant Phillip Homere and respondent Gina Ann LaBlanc have two children together, G.J.H. (9) and E.C.H. (12). LaBlanc's petition for an OFP arises out of an incident that occurred on February 12, 2021, when Homere went to LaBlanc's home in International Falls to drive the children to his home in Duluth for his scheduled parenting time.

When Homere arrived, there were three other children already in his backseat. LaBlanc told Homere that he could not safely transport their two children without sufficient seating and restraints. Homere nevertheless demanded that the children get in the car.

At the district court hearing on LaBlanc's petition, the parties provided contrasting testimony about the incident. LaBlanc testified that when she told Homere that he could not take the children under the circumstances, it led to a confrontation where Homere threatened her with a closed fist. She stated that Homere then picked G.J.H. up by the waist, close to the site of G.J.H.'s emergency appendectomy surgery from two days earlier, and put G.J.H. on his lap. When LaBlanc attempted to stop Homere from driving off, her

¹ Despite appellant's arguments to the contrary, the OFP was granted only as to respondent and the parties' child G.J.H. and was not granted as to the parties' other child, E.C.H. As a result, appellant's argument that the OFP should be reversed as to E.C.H. is inapposite.

arm and hand were inside the car. Homere put the car in reverse and, per LaBlanc, she was dragged down the driveway. LaBlanc testified that she suffered mild injuries from the incident and that G.J.H. was later hospitalized for post-surgery complications. While the medical staff at the children's hospital did not directly attribute the need for G.J.H.'s hospitalization to the incident, the medical staff did tell LaBlanc that Homere's actions had "not help[ed]."

Homere denied having threatened LaBlanc at any point. He testified that LaBlanc was the one who started the incident and that she had "pushed [him]," after which he "put [his] right hand on [G.J.H.]'s lower back" and "cradled both her legs and . . . picked her up and put her inside [his] vehicle." Homere testified that LaBlanc was "screaming" at him at this point. He stated that he told LaBlanc that she needed to move her arm so he could close his door and that he took his foot off the brake and put the car in reverse. Homere further testified he let the car roll backwards but did not press the accelerator and that LaBlanc then lost her footing while continuing to hold onto the door handle. According to Homere, he then stopped the car and opened the door, releasing LaBlanc before driving off.

The district court order concluded that domestic abuse had occurred against both LaBlanc and G.J.H., stating Homere had "caused bodily injury to . . . LaBlanc's arm and hand by holding his car door closed on her arm while putting his vehicle in reverse" and had "caused physical harm to . . . G.J.H. . . . when he picked her up by the waist and forcibly put her in his car." The district court also found that Homere had committed domestic abuse by inflicting fear upon G.J.H. The order identified LaBlanc and G.J.H. as "protected

persons” and prohibited Homere from any contact with either of them unless necessary to facilitate parenting time between Homere and the parties’ two joint children. Parenting time was restricted to Zoom video calls three times a week until Homere completed and followed the recommendations of a “Domestic Violence Inventory” or equivalent assessment.

Homere now appeals.

DECISION

Homere challenges the district court’s OFP as to both LaBlanc and G.J.H. Homere argues that the district court improperly discounted his testimony about the February 12, 2021 incident, and therefore erred by determining domestic abuse had occurred. Homere also asserts that the district court improperly applied *Thompson v. Schrimsher*, 906 N.W.2d 495 (Minn. 2018), when it considered an alleged prior incident of domestic abuse in 2015 in issuing its order.

The Minnesota Domestic Abuse Act governs the issuance of an OFP. Minn. Stat. § 518B.01 (2020). “Whether to grant relief under the Domestic Abuse Act (Minn. Stat. ch. 518B) is discretionary with the district court.” *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). Once a district court determines that domestic abuse under section 518B.01 has occurred, 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.

We review a district court’s decision to grant an OFP for an abuse of discretion. *Id.* “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.” *Id.* (quotation and citation omitted). On appeal from a district court’s decision about whether to grant an OFP, “[a]n appellate court will ‘neither reconcile conflicting evidence nor decide issues of witness credibility.’” *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (quoting *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004)). 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.” *Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005).

A district court may issue an OFP upon a finding of domestic abuse. Minn. Stat. § 518B.01, subds. 4, 6. “[I]f committed against a family or household member by a family or household member,” domestic abuse includes both “physical harm, bodily injury, or assault” as well as “the infliction of fear of imminent physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a)(1)-(2). “Family or Household members” includes “persons who have a child in common regardless of whether they have been married or have lived together at any time.” *Id.*, subd. 2(b)(5) (quotation omitted). As noted above, the district court found here that Homere had physically harmed both LaBlanc and G.J.H., and had inflicted fear upon G.J.H.

In the context of physical harm under subdivision 2(a)(1), the district court must find “either a showing of present harm or an intention on the part of [the actor] to do present harm.” *Aljubailah*, 903 N.W.2d at 643. For infliction of fear under subdivision 2(a)(2), the district court must find that the actor had the “present intention to inflict fear of imminent physical harm, bodily injury, or assault on the person’s [family member],” which

intent “can be inferred from the totality of the circumstances.” *Pechovnik v. Pechovnik*, 765 N.W.2d 95, 99 (Minn. App. 2009).

To begin, we reject Homere’s contention that the district court committed reversible error because it considered the allegations of a prior domestic incident in 2015 as a factor in its decision. The district court cited *Thompson* to support its conclusion that LaBlanc’s allegations of previous domestic abuse by Homere in 2015, which the district court found to be credible, had some bearing on the current petition for an OFP. However, the district court, after commenting that the 2015 incident “did occur” based on the petition and testimony, and that Homere “acknowledged” an incident had occurred, stated, “the incident on February 12th [2021] is clearly dispositive.” The district court determined that the February 2021 incident was sufficient to support a finding of domestic abuse. The district court’s reference to the 2015 incident and citation to *Thompson* do not constitute reversible error.

Additionally, and viewing the record in the light most favorable to the district court’s findings, we conclude the record supports the district court’s finding that domestic abuse occurred as to both LaBlanc and G.J.H. The district court found that Homere, knowingly put his car in reverse while LaBlanc’s arm was caught in the door, thereby injuring LaBlanc’s arm. Despite the parties’ conflicting testimony about who escalated the incident, whether LaBlanc was “screaming” at Homere, and whether Homere threatened LaBlanc with a fist or otherwise, the testimony from both parties supports the district court’s finding that Homere’s actions injured LaBlanc. This fact alone supports the district court’s finding of domestic abuse via physical harm under Minn. Stat. § 518B.01, subd. 2.

Aljubailah, 903 N.W.2d at 643. And importantly, even with regard to those disputed elements, the district court explicitly found LaBlanc’s version of the events to be more credible. We defer to this determination of credibility. *Id.* Deferring to the district court’s credibility determination and viewing the facts in the light most favorable to the OFP, we conclude that the record supports the district court’s findings regarding LaBlanc.

The record also supports the district court’s finding of physical-harm domestic abuse as to G.J.H. The district court specifically found Homere’s testimony that he “cradled” G.J.H. when he took the child to the car to be not credible, instead finding that he “grabb[ed]” G.J.H. and “haul[ed] her to the car.” The district court stated:

This was a volatile interaction where the parties’ nine[-] year[-]old . . . was caught in the middle.

...

. . .[E]ven more troubling to the [c]ourt was the encounter and physical force used with respect to the parties’ [child], G.J.H. While the parties offered differing testimony with respect to how [r]espondent picked up G.J.H., the [c]ourt finds [p]etitioner’s version more credible given the nature of the ongoing argument, and doubts the version testified to by [r]espondent that he basically “cradled” her and took her to the car. Respondent testified of his knowledge of her surgery. Grabbing her by the waist and hauling her to the car meets the definition of domestic abuse in the present sense due to her abdominal surgery two days previously. It also meets the definition of domestic abuse due to the infliction of fear to do imminent physical harm, bodily injury or assault, due to the ongoing argument and quick manner he picked her up and put her in the car while backing up with [p]etitioner’s hand and arm still inside the vehicle. Witnessing these actions would create fear in most people, let alone a nine[-]year[-]old child who had just undergone surgery and was placed in the middle of the conflict.

While it is true the district court did not explicitly state that the physical harm in question—the surgical complications—were caused by Homere’s actions, such a finding is implicit in the district court’s order and is supported by the record when viewed in the light most favorable to the OFP. Moreover, we could remand for explicit findings, but the record shows “the trial court would undoubtedly make findings that comport with the statutory language.” *Grein v. Grein*, 364 N.W.2d 383, 387 (Minn. 1985). As such, we decline to do so.

Because the record supports the district court’s findings that Homere committed domestic abuse under Minn. Stat. § 518B.01, subd. 2(a), against both LaBlanc and G.J.H., the district court did not abuse its discretion in granting the OFP.²

Affirmed.

² Homere also challenges the district court’s decision to limit parenting time between himself and both of the parties’ joint children. However, because the district court restored parenting time on May 28, 2021, this issue is moot. *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015) (“An appeal should be dismissed as moot when a decision on the merits is no long necessary or an award of effective relief is no longer possible.”).