STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1237

In the Matter of Brita Johanna Springstead, on behalf of minor child,
Appellant,

vs.

Roberto Menchaca Garcia,
Respondent.

Filed July 11, 2022
Affirmed; motion denied
Bryan, Judge

Crow Wing County District Court
File No. 18-FA-21-1994

Brita J. Springstead, Brainerd, Minnesota (pro se appellant)

Roberto Menchaca Garcia, Brainerd, Minnesota (pro se respondent)

Considered and decided by Cochran, Presiding Judge; Bryan, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's decision to dismiss her petition for an order for protection (OFP). Specifically, appellant disputes the district court's factual findings and contests the decision to take judicial notice of her previous criminal court file. Because the record supports the district court's findings and because appellant forfeited appellate review of the district court's decision to take judicial notice, we affirm the district court.

FACTS

Appellant Brita Johanna Springstead and respondent Roberto Menchaca Garcia have one child together. On June 11, 2021, Springstead filed a petition for an OFP on behalf of the child, alleging that Garcia physically abused the child, most recently during the "week of May 20, 2021." The petition detailed physical injuries to the child, including bruises on his arm and bumps on his head. Springstead alleged that the injuries to the child happened because Garcia grabbed and threw the child to the ground. The district court granted an ex parte OFP, prohibiting Garcia from having contact with the child.

Garcia requested a hearing, and on July 1, 2021, the district court appointed a Guardian ad Litem (GAL) and permitted Garcia to have supervised visits twice a week. The GAL submitted a report on July 20, 2021, that included a summary of her investigation and interview. The report also explained that on January 23, 2021, a Child in Need of Protective Services (CHIPS) Petition had been filed regarding the child. According to the report, the child resided with Garcia while the investigation was ongoing but spent his days doing distance learning with Springstead. On May 28, 2021, Crow Wing County closed the CHIPS case without adjudication.

On July 22, 2021, the district court held an evidentiary hearing on Springstead's OFP petition. At the hearing, Springstead, Garcia, Garcia's girlfriend, and the GAL testified. Springstead testified that on June 2, 2021, she noticed bruises on the child's arm and photographed them. Days later, Springstead received a letter stating that her CHIPS case was closed. Springstead testified that on June 6, 2021, the child told her Garcia caused the injuries: "those grabbed marks were because his dad grabbed him on the arm, threw

him on the ground. . . . [O]ne that was of concern to him [was] that his dad grabbed his hair and bang[ed] his head on the kitchen table, and I guess that was a very common occurrence."

On cross-examination, among other topics, Springstead was asked about a previous conviction for making a false report to police and whether she has a history of making false police reports. Springstead denied being convicted and Garcia's attorney moved to admit the complaint and sentencing order for Crow Wing County criminal court file 18-CR-20-573 for impeachment purposes. Springstead's attorney objected on foundation grounds, stating that the judge who issued the order would have to testify to its contents. The district court overruled the foundation objection and admitted the exhibits, stating that "it's another Crow Wing County court file that I can take judicial notice of, and I can take judicial notice of the entire file, if I so choose." The exhibits indicate that the district court accepted Springstead's guilty plea but stayed adjudication of guilt.

The GAL also testified at the hearing. She discussed her investigation and report, including her observations of supervised visitation between the child and Garcia. The GAL testified that during her interview with the child, the child was hesitant and would look to Springstead before he answered. When the GAL spoke with the child alone, the child stated that "his dad would get mad at him and punch him, hit him, slap him." The GAL asked if the child "had talked to anybody about that," and the child said "no." When the GAL asked additional questions, the child "repeated those actions. I said, then what happens? And he repeated, 'punches, hits, slams,' and he told me that that was just a pattern that happened." The GAL noted that the child did not seem interested in speaking

about the topic further. The GAL confirmed that the child would have a supervised visit with Garcia that day and observed that the child was excited to see Garcia. At the visit, the child "appeared very excited to see [Garcia,] running to him for a hug. [The child] smiled and appeared happy while talking and playing with [Garcia]. They played in close proximity and [the child] did not seem cautious or afraid." The GAL provided an anecdote to support her conclusion that the child should continue supervised visits with Garcia. "While [the child] was eating the hamburger he had brought with him, sitting at the table together, [Garcia] twice brushed the hair off [the child's] forehead. [The child] did not flinch or seem bothered by that contact." The GAL also recommended that Springstead continue to receive therapy and that Garcia undergo a mental health assessment.

Garcia denied abusing the child. Garcia theorized that the child could have gotten the bumps and bruises from playing sports, as the child played soccer at that time. The petition stated that the abuse occurred on May 20, but Garcia testified that the child was not with him on May 20. Garcia's girlfriend testified that she spends a lot of time with Garcia and his son and that she has never seen him be abusive.

The district court[1] dismissed Springstead's petition, making the following findings and conclusions:

> The above entitled matter came before the court on July 22, 2021. . . . Based upon the evidence presented, the Court finds:
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> 1. [Springstead] and [Garcia] are the parents of [child] . . . . The parties are not married and are not currently in a relationship.

[1] A referee presided over the evidentiary hearing and made written findings and a recommended order that were subsequently adopted by a district court judge.

> 2. [Springstead] alleges that on or about the week of May 20, 2021, child received bruises to his arms and head. [Springstead] took photos of the bruises. The child was in fact with [Springstead] during the week of May 20, 2021.
> 3. During the Guardian ad Litem's (GAL) investigation, the GAL met with the child and [Springstead]. The child looked to [Springstead] before answering the GAL's questions. When questioned individually, the child used the same phrases regarding alleged abuse as [Springstead] used in Court, specifically that abuse was a "pattern." The GAL also observed that the child was very happy to see [Garcia] during a visit and did not show hesitation in his interactions with [Garcia].
> 4. The child had been placed with [Garcia] by Crow Wing County in Court File 18-JV-20-295, which is now closed. In her Petition, [Springstead] did allege abuse against the child during that placement.
> 5. The Court finds that [Springstead's] credibility is doubtful, and takes judicial notice of court file 18-CR-20-573.
> 6. The evidence does not show by a preponderance of the evidence that domestic abuse occurred.
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> THEREFORE, IT IS HEREBY ORDERED: That the above matter is dismissed and any Ex Parte Order issued in this case by this court is vacated.

Springstead appeals.

DECISION

Springstead challenges three factual findings of the district court and argues that the district court improperly took judicial notice of a prior criminal case in which Springstead received a stay of adjudication for falsely reporting a crime.[2] We conclude that the district

[2] Springstead also argues that we must reverse because she was not afforded effective assistance of counsel. This argument is misplaced, however, because absent a statutory right to counsel, an appellant may not assert ineffective assistance of counsel in a civil proceeding. *Maietta v. Comm'r of Pub. Safety*, 663 N.W.2d 595, 600 (Minn. App. 2003), *rev. denied* (Minn. Aug. 19, 2003); *see also Strickland v. Washington*, 466 U.S. 668, 685-86 (1984) (recognizing a right to effective assistance of counsel in criminal prosecutions).

court did not clearly err in its findings and that Springstead forfeited review of the decision to take judicial notice of Springstead's criminal matter.

A district court may issue an OFP if the petitioner demonstrates that "domestic abuse" occurred. Minn. Stat. § 518B.01, subd. 4 (2020). "Domestic abuse" means, in relevant part, (1) "physical harm, bodily injury, or assault," (2) "the infliction of fear of imminent physical harm, bodily injury, or assault," or (3) "terroristic threats" or other specified offenses, if committed against a family or household member. *Id.*, subd. 2(a) (2020). To establish domestic abuse, the petitioner must show present physical harm or that the alleged abuser had a present intent to inflict physical harm or fear of imminent physical harm. *Andrasko v. Andrasko*, 443 N.W.2d 228, 230 (Minn. App. 1989).

I. Challenge to the Findings of Fact

We review the factual findings in support of an OFP for clear error, reviewing the record in the light most favorable to the 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 v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations omitted). "We will not reverse merely because we view the evidence differently. . . . And we neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Id.* (quotations and citations omitted). Under a clear error standard of review, "[w]hen the record reasonably supports the findings at issue on appeal, it is immaterial that the record might also provide a reasonable basis for inferences and findings to the contrary." *In re Civ. Commitment of Kenney*, 963 N.W.2d

214, 223 (Minn. 2021) (quotations omitted). Springstead challenges three factual findings made by the district court. We conclude that the district court did not clearly err.

First, Springstead contests the district court's finding of fact, that "[Springstead] alleges that on or about the week of May 20, 2021, child received bruises to his arms and head. [Springstead] took photos of the bruises. The child was in fact with [Springstead] during the week of May 20, 2021." Springstead argues that the district court erred when it made this finding because she never alleged that the abuse occurred on or about the week of May 20. However, in her petition, Springfield alleged that the "date of most recent domestic abuse" was the "week of May 20, 2021." Garcia testified that the child was not with him on May 20. The district court accurately stated the allegation in the petition and did not clearly err in finding that the child was with Springstead during the week of May 20 because that finding is supported by Garcia's testimony.

Second, Springstead disputes the district court's findings regarding the observations of the GAL. The district court stated the following:

> During [the GAL's] investigation, the GAL met with the child and [Springstead]. The child looked to [Springstead] before answering the GAL's questions. When questioned individually, the child used the same phrases regarding alleged abuse as [Springstead] used in Court, specifically that abuse was a "pattern." The GAL also observed that the child was very happy to see [Garcia] during a visit, and did not show hesitation in his interactions with [Garcia].

The district court accurately characterized the GAL's testimony and report. Springstead, however, disagrees with the GAL's assessment of the child's behavior and asserts that, although six years old, the child has the IQ of a twelve-year-old. Given our standard of

review, we cannot reweigh the evidence as Springstead suggests or set aside the district court's determination of the GAL's credibility. *See Pechovnik*, 765 N.W.2d at 99; *Kenney*, 963 N.W.2d at 221.

Third, Springstead disputes the district court's finding that "The child had been placed with [Garcia] by Crow Wing County in Court File 18-JV-20-295, which is now closed. In her Petition, [Springstead] did allege abuse against the child during that placement." Springstead argues that this finding is incorrect because she did not allege that Garcia abused the child before June 2021. As noted above, however, the petition alleges that Garcia abused the child during the week of May 20, 2021. Further, the evidence presented at trial included testimony that the child had been placed with Garcia by Crow Wing County as part of the child protection matter. Since Crow Wing County closed the child protection matter several days after May 20, 2021, the district court did not clearly err when it found that Springstead alleged Garcia abused the child "during that placement."

II. Judicial Notice of the Criminal Matter

Springstead also argues that the district court erred by taking judicial notice[3] of and admitting exhibits regarding the criminal case in which she received a stay of adjudication

[3] Generally, district courts do not gather their own evidence. *In re Guardianship of Doyle*, 778 N.W.2d 342, 348 (Minn. App. 2010). But a district court may take judicial notice of certain information, including orders issued in another proceeding in the same court. Minn. R. Evid. 201(b) (allowing courts to take judicial notice of adjudicative facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned"); *In re Welfare of Clausen*, 289 N.W.2d 153, 157 (Minn. 1980) (holding that "[j]udicial notice of records from the court in which a judge sits" satisfies the requirement of rule 201(b)).

for falsely reporting a crime. Because Springstead made no objection to the admission of the exhibits on this basis and because she does not explain how the district court's adverse credibility determination would have been different, she has forfeited appellate review of this decision.

The transcripts for the July 22, 2021 hearing indicate that when Springstead was being cross-examined on her credibility and history of making false reports to law enforcement, the district court took judicial notice of the complaint and sentencing order for court file 18-CR-20-573, in which Springstead received a stay of adjudication for falsely reporting a crime. Springstead's attorney objected to the foundation of the court files and to a lack of personal knowledge, stating that the judge who issued the order would have to testify to its contents. Neither Springstead nor her attorney requested an opportunity to be heard pursuant to rule 201(e) of the Minnesota Rules of Evidence at that time. Thus, any current argument based on rule 201(e) is raised for the first time on appeal and is not properly before this court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that, on appeal, an appellant cannot use a new theory to argue an issue that was presented to the district court); *Vangsness v. Vangsness*, 607 N.W.2d 468, 477-78 (Minn. App. 2000) (citing this aspect of *Thiele* in a family law case).

Moreover, Springstead does not cite any authority for the proposition that the district court was prohibited from taking judicial notice. Nor does she otherwise explain why the district court's decision was improper.[4] In addition, we note that even setting aside the

[4] Springstead does reference rule 609 of the Minnesota Rules of Evidence, but the rule contemplates consideration of criminal cases relating to crimes of dishonesty regardless of

admission of the exhibits relating to the previous criminal matter, the evidence presented included testimony that could support the district court's adverse credibility determination. Springstead does not explain how the decision to admit the exhibits resulted in prejudice given the presence of this other evidence. Accordingly, we deem the argument forfeited. *State, Dep't of Labor & Indus. v. Wintz Parcel Drivers*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach issue not adequately briefed); *see also Waters v. Fiebelkorn*, 13 N.W.2d 461, 464-65 (Minn. 1944) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal. . . . [T]he burden of showing error rests upon the one who relies upon it.").

III. Springstead's Motion to Supplement the Record

Springstead filed a motion to supplement the record to include additional evidence that was not submitted to the district court. We deny this request. "The documents filed in the [district] court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases." Minn. R. Civ. App. P. 110.01. If the record submitted on appeal is inaccurate or incomplete, a party may seek to correct or modify the record. Minn. R. Civ. App. P. 110.05. However, "[r]ule 110.05 is limited to correction of

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dispositional consequences, and we have applied that rule based on the possible, not actual, consequences. *See* Minn. R. Evid. 609(a)(2) (allowing admission of evidence relating to prior criminal conduct if the crime "involved dishonesty or false statement, regardless of the punishment"); *State v. Skramstad*, 433 N.W.2d 449, 452-53 (Minn. App. 1988) (holding that trial courts may permit impeachment through converted felony convictions under rule 609(a)(1) because the language of that rule, which allows impeachment where the witness "has been convicted of a crime" focuses on possible punishment, not actual punishment, and because the language of that rule emphasizes "the law under which the witness was convicted," not the actual conviction), *rev. denied* (Minn. Mar. 13, 1989).

the record so that it accurately reflects anything of material value that was omitted from the record by error or accident or is misstated in it." *W. World Ins. Co. v. Anothen, Inc.*, 391 N.W.2d 70, 72 (Minn. App. 1986). The additional documents that Springstead seeks to introduce into the appellate record were not "omitted from the record by error or accident." Rather, Springstead asks this court to consider new evidence that was never presented to the district court. In the absence of any basis to supplement the record, we deny Springstead's motion.

Affirmed; motion denied.