

*This opinion is nonprecedential except as provided by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
A21-1300**

In the Matter of:
Elizabeth A. Frandrup,
Respondent,

vs.

Leo Paul Frandrup,
Appellant.

**Filed June 20, 2022
Affirmed
Bjorkman, Judge**

Scott County District Court
File No. 70-FA-21-10504

Martha Therres, Therres Law Office, PLLC, Prior Lake, Minnesota (for respondent)

John T. Burns, Jr., Burns Law Office, Burnsville, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and
Bratvold, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges an order for protection issued in favor of respondent, arguing that the district court (1) abused its discretion by failing to consider the relevant circumstances and (2) clearly erred by finding that respondent feared future abuse. We affirm.

FACTS

Respondent Elizabeth Frandrup and appellant Leo Frandrup have been married since 1992.¹ In August 2021, Elizabeth filed a petition seeking an order for protection (OFP) based on three acts of domestic assault.

At the September 2021 evidentiary hearing on the petition, Elizabeth testified about the three incidents. In 2011, Leo shoved and pushed Elizabeth against the rails of the deck of their house and yelled at her. In 2012, Leo pressed Elizabeth onto the floor of the deck, repeatedly jumped on her, and spat on her. In August 2020, Leo pushed Elizabeth to the ground in their garage. The latter two incidents stemmed from arguments between the two about cameras that Leo had set up in and around their home.

Leo denied committing acts of abuse and described the three incidents differently. Regarding the 2011 incident, he testified that Elizabeth stepped in a hole in the deck and fell while they were struggling over his phone. Regarding the 2012 incident, he stated that he did not strike or threaten her. And regarding the 2020 incident, Leo explained that both he and Elizabeth lost their balance and fell to the ground in the garage.

The district court granted Elizabeth's petition, finding that Leo committed three acts of domestic abuse against Elizabeth, that Leo's explanation of the incidents was not credible, and that Elizabeth fears future acts of domestic abuse. Leo appeals.

¹ Because the parties share the same last name, we refer to them by their first names in this opinion.

DECISION

We review the issuance of 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 “when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *Id.* (quoting *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011)). We review the district court’s factual findings for clear error and do not attempt to “reconcile conflicting evidence” or “decide issues of witness credibility.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). We will not conclude that the district court’s factual findings are clearly erroneous unless, “on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted).

The Minnesota Domestic Abuse Act (the act) authorizes a district court to issue an OFP to protect victims of domestic abuse. *See generally* Minn. Stat. § 518B.01 (2020). To obtain an OFP, a petitioner must prove by a preponderance of the evidence that the respondent has committed “domestic abuse.” *Id.*, subds. 2(a), 4(b); *Oberg ex rel. Minor Child v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). The act defines “domestic abuse” as any of the following committed against a family or household member: “(1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats . . . ; criminal sexual conduct . . . ; or interference with an emergency call” Minn. Stat. § 518B.01, subd. 2(a).

Leo does not challenge the district court’s findings that he committed three acts of domestic abuse against Elizabeth. But he contends that the district court abused its

discretion by issuing the OFP because (1) the district court did not consider the relevant circumstances described in *Thompson* and (2) the record does not support the district court’s finding that Elizabeth is afraid of future harm. These arguments do not persuade us to reverse.

First, neither the law nor the record supports Leo’s contention that the district court’s analysis was deficient. In *Thompson*, the OFP petition was premised on acts of domestic abuse that occurred three years earlier. 906 N.W.2d at 497. The issue on appeal was whether past acts of domestic abuse—standing alone—constitute “domestic abuse” sufficient to support an OFP. *Id.* at 498. Our supreme court concluded that they do because the act does not contain a temporal requirement. *Id.* at 499-500. But the supreme court noted that district courts have broad discretion to issue or decline to issue an OFP even when acts of domestic abuse are established, stating

once “domestic abuse” has been established, the district court may examine all of the relevant circumstances proven to determine whether to grant or deny the petition for an OFP. 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. at 500. Nothing in *Thompson* requires a district court to consider particular circumstances or make particular findings as Leo advocates.² Rather, *Thompson* affirms

² In his reply brief, Leo asserts for the first time that the district court did not “make findings that would enable judicial review” as required by Minn. R. Civ. P. 52.01. We generally do not consider issues raised for the first time in a reply brief. *See* Minn. R. Civ. App. P. 128.02, subd. 3 (stating the “reply brief must be confined to new matter raised in the brief of the respondent”); *Rochester City Lines Co. v. City of Rochester*, 913 N.W.2d 443, 448 (Minn. 2018) (declining to consider appearance-of-bias argument appellant raised for first time in reply brief).

the district court's broad discretion to issue or not issue an OFP even if it finds the respondent committed acts of domestic abuse.

Moreover, the record demonstrates that Leo repeatedly brought what he asserts are the "relevant circumstances" to the district court's attention. Leo's attorney cross-examined Elizabeth about the remoteness of the three incidents, her failure to timely report them, the lack of physical threats in the 13 months leading up to the evidentiary hearing, and the parties' pending marriage-dissolution proceeding. And counsel argued that these circumstances established that Elizabeth did not currently need protection. While the district court did not make express findings regarding these circumstances, we do not presume error. *See Loth v. Loth*, 35 N.W.2d 542, 546 (Minn. 1949) ("[O]n appeal error is never presumed. It must be made to appear affirmatively before there can be reversal." (quotation omitted)); *Luthen v. Luthen*, 596 N.W.2d 278, 283 (Minn. App. 1999) (applying *Loth* in a family-law appeal). Based on our careful review of the record, we are satisfied that the district court appropriately exercised its discretion by considering the relevant circumstances.

Second, the record supports the district court's finding that Elizabeth fears Leo will commit future acts of domestic abuse against her. Elizabeth testified that she was seeking an OFP because of Leo's "violent temper" and filed the petition when she did because she "was afraid of [Leo] doing something." Leo testified that Elizabeth only sought the OFP to remove him from the home while their marriage-dissolution case was proceeding. Elizabeth denied doing so, instead stating her motivation was "my husband's treatment for the last three years." The district court found Leo's explanation of the domestic-abuse

incidents was not credible. We defer to a district court's credibility determinations. *Gada*, 684 N.W.2d at 514. In sum, we discern no abuse of discretion by the district court in issuing the OFP.

Affirmed.