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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-2009**

In the Matter of:

Lori Ann Kahler, petitioner,  
Respondent,

vs.

Arthur William Lange,  
Appellant.

**Filed July 5, 2011  
Affirmed  
Wright, Judge**

Benton County District Court  
File No. 05-FA-10-1266

Lori Kahler, Apple Valley, Minnesota (pro se respondent)

Thomas E. Kramer, St. Cloud, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Collins, Judge.\*

**UNPUBLISHED OPINION**

**WRIGHT**, Judge

Appellant challenges the district court's decision to issue an order for protection, arguing that the findings of fact and conclusions of law are insufficient to support the

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

issuance of the order for protection and the record does not support the findings. We affirm.

## **FACTS**

When the marriage of appellant Arthur William Lange and respondent Lori Ann Kahler ended in December 2006, Kahler was granted sole physical custody of their minor son, W.L. Lange was granted supervised parenting time with W.L. for one hour each week.

On July 16, 2010, Kahler petitioned the district court for an order for protection against Lange, alleging that Lange violated the supervised parenting-time provision by appearing at W.L.'s soccer practice, where he was verbally abusive to Kahler and caused her to fear being physically assaulted by him, as she had been on several prior occasions. She also alleged that Lange called her on the telephone more than 50 times during the week before the soccer practice. The district court issued an emergency ex parte order for protection.

At the hearing, Kahler testified that Lange called her at work, at home, and on her cellular telephone approximately 50 times between July 7 and July 14, 2010. She testified that these calls frightened her because Lange exhibited erratic behavior, yelled at her, uttered obscenities, and insulted her. Lange appeared at W.L.'s soccer practice on July 14, 2010, in violation of the supervised parenting-time provision and an order issued earlier that day forbidding Lange from having unsupervised contact with W.L. until Lange satisfied certain conditions. Kahler testified that, at the soccer practice, Lange yelled at her, made threatening gestures, moved toward her in a physically threatening

manner, and retreated only after she threatened to call the police. Lange's conduct caused Kahler to fear for her safety. Kahler also described several incidents during the marriage when Lange was physically abusive toward her.

Lange disputed Kahler's allegations. Although he admitted attending the soccer practice and yelling at Kahler, he asserted that he believed his attendance did not violate the supervised parenting-time provision because the practice is a public event. He denied threatening or touching Kahler, using violent gestures, or desiring to hurt her. He admitted that he had telephoned Kahler frequently, but maintained that he called her only 23 times during the week of July 7. These telephone calls were "nonthreatening," "nonconfrontational," and "pleasant," he testified, as he was merely attempting to work with Kahler to reinstate visits with W.L. On cross-examination, Lange's credibility was impeached when he admitted that he had not been truthful with the Stearns County district court in the past.

The district court addressed the following comments to Lange at the close of the hearing:

The number and frequency of the phone calls [are] not reasonable under any circumstances, and certainly not under the current Order that you have . . . . [Y]our opinion that . . . showing up at the soccer [practice] doesn't violate the unsupervised visitation Order is flat out wrong. When you have a Court Order that says you only get supervised visitation, that doesn't mean you get to go around and go to your children's events unless you have a specific exception in your Order for that. And therein lies one of the problems here. You're interpreting things in ways that I don't want to get into because I don't have the whole history of the case here. I do think an Order for Protection is appropriate.

The district court issued a two-year order for protection prohibiting Lange from committing acts of domestic abuse against Kahler and from having any contact with Kahler, except in emergency situations or to communicate regarding W.L. using Our Family Wizard, a communication tool for estranged parents. The district court found that Lange's acts of domestic abuse were "[e]xcessive phone calls at inappropriate times" and "threatening behavior at [W.L.'s] soccer game." This appeal followed.

### DECISION

A district court's decision to grant an order for protection under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 (2010), is discretionary. *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). A district court abuses its discretion when its findings are unsupported by the evidence or based on a mistake of law. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). When reviewing the district court's findings, we view the evidence in the light most favorable to the findings; and we will not reverse absent a "definite and firm conviction that a mistake has been made." *Id.* (quotation omitted). On review, "[w]e neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Rather, we defer to the district court's credibility determinations. *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988).

The Minnesota Domestic Abuse Act authorizes a district court to issue an order for protection to "restrain the abusing party from committing acts of domestic abuse." Minn. Stat. § 518B.01, subd. 6(a)(1). "Domestic abuse" is defined as (1) "physical harm,

bodily injury, or assault,” (2) “the infliction of fear of imminent physical harm, bodily injury, or assault,” and (3) terroristic threats, criminal sexual conduct, or interference with an emergency call, “if committed against a family or household member by a family or household member.” *Id.* An order for protection may be issued if an individual “manifests a present intention to inflict fear of imminent physical harm, bodily injury or assault,” *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989), which the district court may infer from the totality of the circumstances, *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009). Although it is not dispositive, a party’s past abusive conduct is a relevant factor for determining whether an order for protection is warranted. *Boniek*, 443 N.W.2d at 198. Because of the substantial discretion accorded the district court when deciding whether to grant or deny a domestic-abuse protection order, the basis for the district court’s decision must be set forth with particularity, including specific findings addressing domestic abuse that are sufficient to support the district court’s decision. *Andrasko v. Andrasko*, 443 N.W.2d 228, 230 (Minn. App. 1989) (citing *Wallin v. Wallin*, 290 Minn. 261, 267, 187 N.W.2d 627, 631 (1971)).

Lange argues that the district court’s findings of fact and conclusions of law are insufficient to support the district court’s decision to issue an order for protection because there are no findings that specifically address the statutory definition of domestic abuse set forth in Minn. Stat. § 518B.01. The order-for-protection form that the district court used includes the following pre-printed provision: “Based on the evidence presented at the hearing in this matter, the Court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW.” Beneath this provision, the district court found that “[a]cts

of domestic abuse have occurred, including the following . . . [e]xcessive phone calls at inappropriate times” and “threatening behavior at [W.L.’s] soccer game.” Based on these two findings of fact, the district court concluded that these acts constitute domestic abuse. When considered in light of the entire record, including the existing court order requiring supervised parenting time, these findings are sufficient to establish the basis for the district court’s decision to grant Kahler’s petition for an order for protection.

The district court reasonably inferred that Lange intended to inflict fear of imminent physical harm from the combination of excessive telephone calls and threatening behavior at the soccer practice. Because a finding that domestic abuse occurred may be based on the totality of the circumstances, each factual finding need not independently satisfy the definition of “domestic abuse.” *See Pechovnik*, 765 N.W.2d at 99 (holding that district court may infer intent to inflict fear of imminent physical harm, bodily injury, or assault from the totality of the circumstances). The district court’s findings identify specific facts regarding Lange’s conduct, which, in light of the totality of circumstances, provide a sufficient factual basis for the district court’s conclusion that Lange’s actions constitute “domestic abuse.” Minn. Stat. § 518B.01, subd. 2(a)(2) (defining domestic abuse to include “the infliction of fear of imminent physical harm, bodily injury, or assault” against a family or household member).

Lange also asserts that these findings are not sustained by the record, which he contends contains no evidence of domestic abuse. But this contention ignores Kahler’s testimony regarding Lange’s conduct, which caused her to fear being physically assaulted. Kahler testified that Lange appeared at W.L.’s soccer practice despite a court

order prohibiting him from visiting W.L. and that Lange yelled and made threatening gestures while advancing toward her. Kahler testified that these actions caused her to be so frightened of Lange that she was shaking and nervous throughout the entire practice. Lange's failure to comply with the court-ordered limitations on his contact with W.L., along with his compulsive telephone contact with Kahler, heightens the threatening impact of his appearance at the soccer practice. Kahler testified that Lange's yelling and insults during the approximately 50 telephone calls that he placed the preceding week frightened her. And Kahler provided a context for her fear when she testified regarding the history of Lange's abusive conduct toward her. The district court discredited Lange's explanations and credited Kahler's testimony. Our careful review establishes that the district court's findings as to the specific acts of domestic abuse that occurred are supported by the record.

Lange next challenges the evidentiary basis to infer that Lange intended to inflict fear of imminent physical harm, bodily injury, or assault on the ground that he did not make overt threats or engage in physical contact with Kahler. This argument is unavailing. Verbal threats or indirect physical aggression may be abusive in certain circumstances. *See Pechovnik*, 765 N.W.2d at 99 (affirming issuance of order for protection based on conduct that included "gestures, persistent questioning, aggressive conversation and controlling behavior"); *Boniek*, 443 N.W.2d at 198 (holding that threats, mutilation of marriage certificate, and physical aggression in petitioner's presence, in light of past abuse, formed sufficient evidentiary basis for decision to issue order for protection); *Hall v. Hall*, 408 N.W.2d 626, 629 (Minn. App. 1987) (holding that verbal

threats may provide sufficient evidentiary basis for order for protection), *review denied* (Minn. Aug. 19, 1987). Kahler testified that Lange “tower[ed] over” her, made “threatening gestures,” and yelled at her while advancing toward her. This testimonial evidence demonstrates physical aggression, which is more than sufficient to support the district court’s finding that Lange’s behavior was “threatening” and constituted domestic abuse within the meaning of Minn. Stat. § 518B.01. *See Pechovnik*, 765 N.W.2d at 99-100 (viewing evidence in its totality and concluding that appellant exhibited behavior permitting inference that he intended to instill fear of harm in petitioner); *Boniek*, 443 N.W.2d at 198 (same).

There is an ample evidentiary basis for the district court’s determination that Lange intended to inflict fear of imminent physical harm, bodily injury, or assault. Accordingly, the district court’s decision to issue the order for protection was a sound exercise of its discretion.

**Affirmed.**