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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-980**

Deqa Sheik Ahmed, petitioner,
Respondent,

vs.

Abdillahi Hassan,
Appellant.

**Filed February 13, 2012
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-FA-10-9760

Mohammadee Summra Shariff, Walter Burk, Central Minnesota Legal Services,
Minneapolis, Minnesota (for respondent)

Gregory R. Solum, Edina, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Kalitowski, Judge; and Minge,
Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

On appeal from the district court's grant of an order for protection (OFP) to respondent Deqa Sheik Ahmed, appellant Abdillahi Hassan argues that the evidence was insufficient to support the issuance of the order. We affirm.

DECISION

“The decision to grant an OFP under the [Minnesota Domestic Abuse Act] . . . is within the district court’s discretion. A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quotations and citation omitted). This court reviews the record in the light most favorable to the district court’s findings and will not reconcile conflicting evidence or decide issues of witness credibility, as those issues “are exclusively the province of the factfinder.” *Id.* at 99 (quotation omitted).

The Minnesota Domestic Abuse Act authorizes a district court to issue an OFP to “restrain the abusing party from committing acts of domestic abuse.” Minn. Stat. § 518B.01, subd. 6(a)(1) (2010). “Domestic abuse” includes the infliction of physical harm or fear of imminent physical harm by one family or household member against another. Minn. Stat. § 518B.01, subd. 2(a) (2010). “[T]he definition of ‘domestic abuse’ under Minnesota’s Domestic Abuse Act . . . require[s] either a showing of present harm, or an intention on the part of appellant to do present harm.” *Kass v. Kass*, 355 N.W.2d 335, 337 (Minn. App. 1984). “Present intent to inflict fear of imminent physical harm, bodily injury, or assault can be inferred from the totality of the circumstances, including a history of past abusive behavior.” *Pechovnik*, 765 N.W.2d at 99.

Appellant argues that the evidence is insufficient to support a finding that he inflicted present physical harm on respondent or that he intended to inflict fear of imminent physical harm on her. We disagree.

The district court credited respondent's testimony that, throughout 2008 and 2009 when the parties lived together, appellant physically harmed her by hitting her "many times." Specifically, the court credited her testimony that appellant slapped her in 2008, and squeezed her neck when she was pregnant in January 2009, and that she believed he "was planning to do more." In addition, the district court credited respondent's testimony that, after a disagreement regarding their child in October 2010, appellant "threatened to kill her and take her children from her." The court found that respondent was afraid to call the police at this time, but eventually called the police in November and December 2010 because appellant's threats became increasingly severe. And the court credited her testimony that she felt threatened when she received text messages from appellant in December 2010.

Although the district court did not specifically make a finding that appellant intended to inflict fear of imminent physical harm on respondent, because it issued the OFP, its finding that the required intent is present is implied. *See Prahll v. Prahll*, 627 N.W.2d 698, 703 (Minn. App. 2001) (stating that "[w]e may treat statutory factors as addressed when they are implicit in the findings. . ."). Further, this record supports the district court's inference of that intent. *See Pechovnik*, 765 N.W.2d at 99 (holding that a district court may infer intent to inflict fear of imminent physical harm, bodily injury, or assault from the totality of the circumstances). Specifically, the district court could infer that appellant intended to inflict fear of imminent physical harm on respondent from its findings that appellant "threatened to kill or beat her" and sent respondent threatening

text messages, and respondent's testimony that appellant threatened to hurt her with a gun.

Appellant argues that instances of alleged abuse in 2008 and 2009 are too remote in time to be indicative of his intent in December 2010, when respondent filed an OFP petition. But respondent specifically and repeatedly testified that the incidents of domestic abuse that occurred in 2008 and 2009 were connected to, and provided the context for, appellant's more recent verbal threats. Thus, the incidents of abuse in 2008 and 2009 properly informed the district court's analysis of the totality of the circumstances.

Moreover, verbal threats are sufficient to support the issuance of an OFP, particularly when there is a history of abuse between the parties. *See Pechovnik*, 765 N.W.2d at 99 (affirming the issuance of an OFP based on conduct that included "gestures, persistent questioning, aggressive conversation and controlling behavior" where there was also a "history of threatening behavior" (quotations omitted)); *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989) (affirming the issuance of an OFP based on a written threat and mutilation of marriage certificate, and physical aggression in petitioner's presence, in light of past abuse); *Hall v. Hall*, 408 N.W.2d 626, 629 (Minn. App. 1987) (affirming the issuance of an OFP based on verbal threats that placed the petitioner in fear of imminent physical harm, in light of past abuse), *review denied* (Minn. Aug. 19, 1987).

Finally, appellant argues that the text messages were not specific or violent threats. Relying on *Hall*, 408 N.W.2d at 629, he asserts that nonphysical threats must be

“sufficiently specific and violent” to support respondent’s claim of fear of imminent physical harm. But the district court’s interpretation of the text messages rests on its credibility determinations and the context of the parties’ abusive and controlling relationship. Coupled with respondent’s testimony that appellant intimidated her to prevent her from calling the police on earlier occasions, appellant’s text message stating “[Y]ou called police three times and you also called complaining to elders” could, on this record, reasonably be viewed as an admonition or threat.

In addition, the district court did not rely solely on the text messages; the court also credited respondent’s testimony about verbal threats. Respondent testified that appellant stated he would beat or kill her and take the children from her, and that he would use a gun against her. These statements are violent and specific. And as in *Hall*, the “threats are . . . more serious when considered in the context of the past physical abuse.” *Id.* Because this court defers to the district court’s credibility determinations, we defer to the district court’s inference of intent.

The district court’s finding that domestic abuse occurred is supported by the evidence. Therefore, we conclude that the district court did not abuse its discretion by issuing the OFP against appellant.

Affirmed.