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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-166**

Tina Lisa Sanz, petitioner,
Respondent,

vs.

Brian Thomas Biele,
Appellant.

**Filed December 8, 2009
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-FA-08-7233

Tina Lisa Sanz, 4941 37th Avenue South, Minneapolis, MN 55417 (pro se respondent)

Gregory A. Abbott, P.O. Box 24453, Minneapolis, MN 55424 (for appellant)

Considered and decided by Lansing, Presiding Judge; Stoneburner, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Tina Lisa Sanz and Brian Thomas Biele had an argument after she asked him to move out of the home that they shared, which she owned. The argument led to a physical altercation. Sanz petitioned the Hennepin County District Court for an order for protection (OFP). The district court granted the petition and issued an OFP based on its

finding that, during the argument, Biele pushed Sanz, causing her to fall against a wall and sustain injuries. We affirm.

FACTS

This case arises out of the deterioration of a romantic relationship. The parties began dating in May 2006. When Biele lost his job in September 2006, Sanz invited him to move into her home. Biele resided there until November 3, 2008. On that evening, Sanz asked Biele to move out of the home. Sanz testified that she had been planning for some time to ask Biele to leave.

Sanz's request led to an argument. At some point during the argument, Sanz entered a bedroom closet and grabbed a handful of Biele's dress shirts from the closet rod and placed them in a basket on the floor. Biele testified that he believed that Sanz might be damaging his shirts, and he reacted quickly to intervene. At this point, the parties' accounts differ. Sanz testified that Biele lunged toward her and pushed her backward with force, causing her to fall against a wall that was several feet behind her. She introduced into evidence photographs of bruises on her back and her buttocks. Biele testified that as he approached the closet, Sanz stood up and bumped into his hands, which were extended in an attempt to grab the shirts. Biele testified that Sanz then lost her balance and fell onto the floor, landing on her buttocks. Biele denied that Sanz hit her back on the wall or the floor. Sanz called 911, and Biele fled.

The next day, Sanz petitioned the district court for an OFP. The district court granted an *ex parte* OFP that same day. After a hearing in late November 2008, the district court resolved the parties' varying factual accounts of the incident by finding that

the injuries Sanz sustained, which were proved by a medical report and by photographs, corroborated Sanz's version of the incident. The district court granted the petition and issued an OFP. Biele appeals.

DECISION

Biele argues that the district court erred by granting the OFP. We will not overturn a district court's findings of fact unless they are clearly erroneous. *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App. 2007). If the evidence is in conflict, this court will defer to the district court's credibility determinations. Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). The ultimate decision whether to grant an OFP is within the district court's discretion. *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005). "A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law." *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). We apply a *de novo* standard of review to questions of statutory interpretation. *Id.*

To obtain an OFP under chapter 518B of the Minnesota Statutes, a petitioner must allege and prove the existence of domestic abuse. Minn. Stat. § 518B.01, subd. 4(b) (2008); *see also Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). The Minnesota Domestic Abuse Act defines "domestic abuse" to mean

the following, if committed against a family or household member by 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) (2008). In essence, the pertinent parts of the statute requires a party to show either “present harm or an intention on the part of the [alleged abuser] to do present harm.” *Chosa*, 693 N.W.2d at 489 (quotation omitted); *see also Kass v. Kass*, 355 N.W.2d 335, 337 (Minn. App. 1984).

The district court found that, although Biele disputed Sanz’s claims, “the injuries sustained by [Sanz] corroborate [her] version of the events that took place on November 3, 2008.” More specifically, the district court found that the “incident was corroborated by a police report, a medical report, and photographs taken the day after the incident.” The district court concluded that Sanz satisfied her burden of proving that Biele “committed acts of domestic abuse upon” Sanz and that “it is appropriate to award the Order for Protection.”

Biele makes four arguments as to why Sanz did not satisfy her burden of proving that he engaged in domestic abuse. First, Biele argues that a single incident resulting in injury cannot constitute domestic abuse for purposes of granting an OFP. He relies on caselaw saying that it is appropriate to assess the “totality of the record.” The caselaw to which Biele refers provides that a history of domestic abuse may support the grant of an OFP. In *Boniek v. Boniek*, 443 N.W.2d 196 (Minn. App. 1989), we stated, “Past abusive behavior, although not dispositive, is a factor in determining cause for protection.” *Id.* at 198. But nothing in *Boniek* requires a history of abusive behavior. *Id.* In addition, *Boniek* is distinguishable from this case because the petitioner in that case proved “the

infliction of fear of imminent physical harm, bodily injury, or assault,” pursuant to the second clause of subdivision 2(a). *See* Minn. Stat. § 518B.01, subd. 2(a)(2). Contrary to Biele’s argument, subdivision 2(a) does not require proof of a history of abusive behavior or multiple incidents of physical harm, bodily injury, or assault.

Second, Biele argues that the district court erroneously believed that it was required to grant an OFP upon proof of domestic abuse. Biele cites the following statement by the district court during the hearing: “the statute says that if I find that there was that type of interaction, then I must grant an Order For Protection.” Biele contends that the district court’s statement is erroneous because a district court must exercise discretion by deciding to either grant or deny an OFP if a petitioner has proved the existence of domestic abuse. Biele is correct to the extent that the caselaw states that the issuance of an OFP is a matter of discretion for the district court. *See, e.g., Chosa*, 693 N.W.2d at 489. The caselaw is consistent with the text of the Domestic Abuse Act, which states that a district court “*may* provide relief” to a petitioner. Minn. Stat. § 518B.01, subd. 6(a) (2008) (emphasis added). But it is difficult to find a case in which a district court denied a petition for an OFP after a petitioner had proved domestic abuse.

Even if we accept Biele’s premise that, upon proof of domestic abuse, a district court retains the discretion to deny a petition for an OFP, there is no error in this case because the record indicates that the district court actually exercised discretion when deciding to grant the OFP. The district court acknowledged at the hearing that an OFP “is a very, very powerful tool that can [be] used against someone” and “I’m very sensitive to that.” The district court stated that it was “very mindful” of the consequences

of its decision. The OFP itself states that the district court “finds that it is appropriate to award the Order for Protection.” These statements are sufficient to reflect that the district court exercised an appropriate degree of discretion when deciding to issue the OFP.

Third, Biele argues that the Domestic Abuse Act uses poor syntax by defining “domestic abuse” to mean “physical harm” or “bodily injury” “if committed against a family or household member.” Minn. Stat. § 518B.01, subd. 2(a). He asserts that a person cannot “commit” physical harm or bodily injury against another; he states that the statute makes sense only if one interprets it to require the commission of *an action that causes* physical harm or bodily injury. Biele does not make a constitutional argument but, rather, confines his argument to the interpretation of the statute. Biele’s argument must be considered in light of the district court’s finding that Biele “inflicted physical injury” on Sanz. Subdivision 2(a) is sufficiently clear to allow the district court and this court to apply the statute to the relevant facts of the case. The legislature’s intent is clear without the additional language suggested by Biele. Furthermore, Biele has not identified any legal theory or cited any legal authority in support of this argument.

Fourth and finally, Biele argues that his actions cannot constitute domestic abuse because he was exercising his right to defend his property. Biele relies on the statutory defense-of-property defense that applies in criminal prosecutions. *See* Minn. Stat. § 609.06, subd. 1(4) (2008). He has not cited any caselaw providing that the defense may be asserted in response to a petition for an OFP. Even if he could establish that point of law, he would be unable to prove the requirements of the defense, which include, among other things, that his “judgment as to the gravity of the situation was reasonable under the

circumstances” and that his decision to defend the property was reasonable in light of the perceived threat. *State v. Carothers*, 594 N.W.2d 897, 904 (Minn. 1999); Minn. Stat. § 609.06, subd. 1(4). Sanz testified that she removed Biele’s shirts from the closet and put them in a basket on the floor. Biele testified that it looked as though Sanz was throwing the shirts on the floor or placing them at her feet. Under either version of the incident, Biele could not prove that he was justified in pushing Sanz hard enough to cause her to fall and thereby to suffer bruises on her back and buttocks. Thus, the district court did not err by implicitly rejecting Biele’s defense-of-property argument.

In sum, the evidence supports the district court’s finding of domestic abuse and its decision to issue an order for protection.

Affirmed.