STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2178

Chaltu A. Omar, petitioner,
Appellant,

vs.

Bariso Mohammed Omar,
Respondent.

Filed August 17, 2010
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27FA084841

Lisa M. Lamm, Foley & Mansfield, PLLP, Minneapolis, Minnesota (for appellant)

Edith Marcos See, Minneapolis, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Stoneburner, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant ex-wife challenges the district court's order denying her motion to extend an order for protection (OFP) against respondent ex-husband. Appellant argues that the district court erred in finding that her fear of harm was unreasonable and that

respondent did not violate the existing OFP. Appellant also argues that the district court improperly considered opinion testimony from the guardian ad litem. We affirm.

FACTS

Appellant Chaltu Omar and respondent Bariso Omar were married and have two young children. In August 2008, appellant petitioned for an OFP against respondent. Respondent agreed to the OFP without admitting appellant's allegations of domestic abuse. In October 2008, the OFP was amended to provide respondent with supervised parenting time. The OFP prohibits respondent from committing acts of domestic abuse against appellant and prohibits all contact with appellant, including through third parties.

On the day before the OFP was to expire, appellant moved for an extension of the OFP, alleging that respondent had followed her from the supervised parenting time location and had told her mother that he would "do something to [her] when [her] OFP expired." Appellant appeared pro se at the initial hearing on her motion, which took place in late August 2009. Respondent appeared with counsel. Appellant testified through an interpreter. Appellant testified that respondent recently followed the car in which she was a passenger after she picked up the children from Genesis, the supervised parenting-time facility. Appellant was not certain of the date but testified that it was on a Saturday during the last two weeks of July or the first week of August, 2009. Appellant testified that respondent followed the car she was in on University Avenue and that every time her car stopped, respondent also stopped, but that respondent did not follow when her car turned off of University Avenue onto Lexington Avenue. Appellant testified that she did not report respondent or call 911 on this occasion because she was "nervous" and

"scared" and because she didn't have respondent's license plate number. Respondent denied following appellant and testified that he always travels from Genesis to his home address via University Avenue.

At the continued hearing in October 2009, appellant and respondent were both represented by counsel, and appellant participated through an interpreter. Respondent admitted telephoning appellant's mother before the OFP was in place but denied calling her after the OFP was in place.[1] He testified that it was his and appellant's cultural practice for a husband to contact the wife's family for reconciliation purposes if the wife left the husband. Respondent stated that he had called appellant's mother when appellant first left him. But he denied any recent calls to appellant's mother.

Jill Helgemoe, the manager of the supervised parenting program at Genesis, testified about arrival and departure procedures for parents involved in supervised parenting time at Genesis. Those practices include holding the noncustodial parent for approximately ten minutes after the custodial parent leaves with the children. Through Helgemoe, there was testimony that, in the four weeks prior to appellant's petition for extension of the OFP, there was no parenting time exercised for the earliest two weeks, no sign-up log was available for the third week, and respondent left the building thirty minutes after appellant left in the fourth week. An undated, sign-in sheet was admitted into evidence showing that, on that undisclosed date, respondent left the visitation facility only four minutes after appellant left.

[1] Respondent also testified that he called appellant's mother when he first received the OFP.

A person, whom appellant identified by voice as her mother, testified from Ethiopia by telephone at the October hearing. Through an interpreter, she testified that respondent had called her two months ago. Appellant's mother stated that respondent asked her to talk to appellant and persuade her not to accuse him or take him to court. She also testified that about three months ago respondent had called to say that he had moved closer to where appellant was living. The telephone call was disconnected before appellant's counsel finished direct questioning. The connection could not be restored, therefore respondent's counsel was unable to cross-examine appellant's mother.

The guardian ad litem (GAL) for the parties' children testified at the district court's request. The GAL testified that she has been involved with the parties on parenting issues since January 2009 and that the parties had been very cooperative and respectful during discussions about parenting time. The parties were able to come to an agreement about a graduated parenting-time schedule for respondent, who had not seen his children for more than a year when supervised parenting time began. Appellant, however, was very opposed to the GAL's recommendation that respondent begin to have overnight parenting time in January 2010. Therefore, the parties were scheduled to return to court in December 2009 for a judicial determination on overnight parenting time. The GAL was allowed to testify that, based on her observations, she has no concerns with violence or anger regarding respondent. The GAL testified that "[h]e has repeatedly articulated to me that he only wishes to have a relationship with his children and not with his wife." The GAL admitted that her interaction with the parties always involved other individuals: attorneys, interpreters, and early neutral evaluators.

The district court announced its decision orally at the end of the October hearing, denying appellant's petition to extend the OFP. The district court issued a written order on the same day. In its oral decision, the district court found that appellant was sincere in expressing her fear but that, on the record made, it could not find that there was a violation of the OFP based on the driving incident. The court found that although it was "likely . . . that at some point, [respondent] did talk to his mother-in-law about the dissolution[, n]othing that [his mother-in-law] said in her examination would lead me to conclude that [respondent] was trying to do anything wrong or was trying to threaten [appellant] through her mother." The district court concluded that appellant failed to meet her burden of proof. The district court's written findings are consistent with its oral decision, but added that "it is probable" that respondent called appellant's mother after the OFP was issued, but it was not clear what respondent had said to her.[2] The district court noted that the fact of the calls may have contributed to appellant's fear of respondent and she may have seen the calls as "pressure on her." But the district court found that respondent did not violate the OFP and that appellant's fears, while sincere, are not reasonable as a matter of law.

Appellant challenges the denial of her motion to extend the OFP.

D E C I S I O N

The 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

[2] The OFP did not prohibit respondent from contacting his mother-in-law, but plainly prohibited respondent from using his mother-in-law to contact appellant.

court abuses its discretion when its findings are unsupported by the record or when it misapplies the law. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). This court reviews the record in the light most favorable to the district court's findings and reverses only if it has a "definite and firm conviction that a mistake has been made" in reaching those findings. *Id*. (quotation omitted). If the evidence is in conflict, this court defers to the district court's credibility determinations. Minn. R. Civ. P. 52.01; *see also Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003) (stating that "the weight and believability of witness testimony is an issue for the district court"), *review denied* (Minn. July 15, 2003). "We will not reverse merely because we view the evidence differently." *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). And "[w]e neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder." *Id*.

Under the Domestic Abuse Act,

> [t]he court *may* extend the terms of an existing order [for protection] or, if an order is no longer in effect, grant a new order upon a showing that:
>
> (1) the respondent has violated a prior or existing order for protection;
> (2) the petitioner is reasonably in fear of physical harm from the respondent;
> (3) the respondent has engaged in acts of harassment or stalking within the meaning of section 609.749, subdivision 2; or
> (4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

> A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

Minn. Stat. § 518B.01, subd. 6a(a) (2008) (emphasis added). "The general rule is that the burden of proof rests on the party seeking to benefit from a statutory provision." *C.O. v. Doe*, 757 N.W.2d 343, 352 (Minn. 2008). The district court specifically found that appellant failed to meet her burden of proving either of the first two bases for an extension.

Violation of the existing OFP

Appellant argues that the district court clearly erred by finding that respondent did not violate the existing OFP. Appellant argues that evidence of the violation is supported by respondent's admission that he drove on University Avenue at the same time as appellant, Helgemoe's testimony that on at least one occasion respondent left Genesis only four minutes after appellant left with the children, and appellant's mother's testimony that respondent contacted her approximately two months before the October hearing. But there is no evidence that the day that respondent left Genesis shortly after appellant left is the same date that appellant alleges that she was followed. And appellant does not explain why respondent's presence on University Avenue violated the OFP or how the district court erred by finding that appellant failed to prove that respondent violated the OFP in this instance. Moreover, the district court appears not to have credited appellant's mother's hearsay testimony about what respondent said to her during previous phone calls. The nature of appellant's mother's testimony, including the lack of any cross-examination, left the district court unable to credit her testimony that

respondent was asking her to contact appellant on his behalf. Given the limited evidence in the record and the fact that this court defers to the district court's credibility determinations, we cannot conclude that the district court clearly erred by declining to find that respondent violated the OFP.

Reasonable fear of harm

Appellant argues that the district court did not make adequate findings of fact but instead "merely reached a conclusion" that her fear was not reasonable. All orders in family court proceedings must "contain particularized findings of fact sufficient to support determinations of . . . issues decided by the court." *Andrasko v. Andrasko*, 443 N.W.2d 228, 230 (Minn. App. 1989). Accordingly, a district court is required to provide written findings, make an oral record of findings, or note findings in a memorandum accompanying the court's order. Minn. R. Civ. P. 52.01.

Here the district court made oral and written findings that although appellant's fear of respondent is sincere, she did not prove that her fear of physical harm is reasonable. The only incidents that appellant alleges occurred after the OFP was issued were that: (1) she perceived that respondent had once followed her from the supervised parenting-time facility and (2) respondent had called her mother in Ethiopia to get a message to appellant. The district court found that the purported "following" incident on University Avenue was not proved, and the district court did not credit appellant's mother's testimony that respondent had attempted to contact appellant through her. We conclude that the district court's findings are adequate given the record, and we are not left with

the definite and firm conviction that a mistake has been made. Therefore we decline to reverse, even though we might have viewed the evidence differently.

Opinion testimony

The GAL testified at the request of the district court, and not as a witness for either party. Appellant argues that the district court improperly considered opinion testimony from the GAL about respondent's propensity for violence. Appellant asserts that the evidence was inadmissible expert testimony. Respondent asserts that the evidence was admissible lay-witness opinion testimony.

Respondent's counsel asked the GAL if she had noted or made any observations that would lead her to conclude that respondent has a propensity for violence. Appellant objected on the ground of lack of foundation. The district court initially sustained the objection, then immediately changed the ruling, noting that the GAL in this case was experienced and that GAL's frequently advise the district court about the possibility of danger "particularly with respect to kids." Appellant's counsel conceded that the GAL's testimony would "be appropriate—possibly appropriate testimony, expert testimony" if the case involved an OFP on behalf of the children. When the GAL was asked if she had observed any indication that respondent bears any hatred, animosity, violent intent, or violent desires toward appellant, appellant's counsel again objected on the ground of lack of foundation.

An objecting party is limited on appeal to the grounds stated in an objection. *See State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993) (stating that a hearsay issue was not properly raised on appeal when the objection at trial was that a statement was an

improper legal conclusion). Evidentiary rulings concerning foundation are within the district court's sound discretion and will only be reversed when that discretion has been clearly abused. *Johnson v. Washington County*, 518 N.W.2d 594, 601 (Minn. 1994). And even if we consider the objection to the GAL's testimony as an objection to inadmissible expert testimony, a district court's ruling on the admissibility of an expert opinion rests within the sound discretion of the district court and will not be reversed unless it is based on an erroneous view of the law or is an abuse of discretion. *Gross v. Victoria Station Farms, Inc.*, 578 N.W.2d 757, 760 (Minn. 1998). We conclude that appellant has failed to demonstrate any reversible error based on admission of the GAL's testimony, which was based on the GAL's personal observation.

Affirmed.