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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0892**

In the Matter of:  
Nancy J. Gibson o/b/o A.G., petitioner,  
Respondent,

vs.

Michael J. Gibson,  
Appellant.

**Filed March 18, 2013  
Affirmed  
Halbrooks, Judge**

Chisago County District Court  
File No. 13-FA-11-429

Elizabeth J. Richards, Loryn Meloy (certified student attorney), Minnesota Coalition for Battered Women, St. Paul, Minnesota (for respondent)

Christopher D. Johnson, Josh Brekken, Forest Lake, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Larkin, Judge; and Rodenberg, Judge.

**UNPUBLISHED OPINION**

**HALBROOKS**, Judge

Appellant challenges the district court's grant of an order for protection to respondent and her standing to bring a petition on behalf of appellant's daughter. Because we conclude that respondent has standing to petition for the order and the district

court's factual findings are supported by the record and are sufficient to support the issuance of the order, we affirm.

## FACTS

On December 28, 2011, respondent Nancy Gibson petitioned for an order for protection (OFP) on behalf of A.G., then 15, against appellant Michael Gibson. Appellant is A.G.'s father and respondent's ex-husband. The petition alleged that an emergency existed and that respondent feared "immediate and present danger of further acts of domestic violence." She asked the district court to "[p]lease sign this to protect [A.G.] and let her live a stress free teenage life."

On January 6, 2012, the district court held a hearing in the matter. A.G. testified that she suffered emotional harm while living with appellant, stating that she cut herself and became depressed. She testified that she began living with respondent following a September 15, 2011 incident in which her father picked her up from softball practice after he had been drinking. A.G. stated that her father told her in approximately 2009 that he gave her life and he could take it away; in late 2011 he raised a clenched fist at her. In the summer of 2011, appellant told A.G. that he has "so much rage built up" inside of him that he would "kill" anyone with whom she got into a fight, which she testified made her fearful, thinking "what if it's me." One of A.G.'s friends testified that appellant's actions and drinking have also frightened her, specifically citing an instance where appellant came close to her face and threatened to "beat" her.

A.G. testified that appellant calls her repeatedly and blames her for his excessive use of alcohol, telling her that, if she just comes home, he will stop drinking. Appellant

has threatened suicide multiple times. A.G. described him calling her into his room and telling her that he had taken 30 Ibuprofen and would not see her again. After A.G. started crying, appellant said that he was only kidding and just wanted to see if she really cared. Appellant denied the allegations and stated that he has never physically abused, struck, or threatened his child. The district court concluded that appellant's actions constituted domestic abuse and entered an OFP. This appeal follows.

## D E C I S I O N

### I.

Appellant challenges respondent's standing to bring an OFP, arguing that she is not a "family or household member" as defined by statute. "When the facts relevant to standing are undisputed, the standing inquiry raises a question of law subject to de novo review." *Olson v. State*, 742 N.W.2d 681, 684 (Minn. App. 2007). "Standing is acquired in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 31-32, 221 N.W.2d 162, 165 (1974)). Here, the legislature has granted standing in certain circumstances.

The Minnesota Domestic Abuse Act provides that an OFP petition may be filed by "any family or household member personally or by a family or household member . . . or, if the court finds that it is in the best interests of the minor, by a reputable adult age 25 or older on behalf of minor family or household members." Minn. Stat. § 518B.01, subd. 4(a) (2012). The act defines "family or household members" as

(1) spouses and former spouses; (2) parents and children; (3) persons related by blood; (4) persons who are presently residing together or who have resided together in the past; (5) persons who have a child in common regardless of whether they have been married or have lived together at any time; (6) a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time; and (7) persons involved in a significant romantic or sexual relationship.

*Id.*, subd. 2(b) (2012).

A.G. was 15 at the time that respondent filed the OFP petition on her behalf. Relying on Minn. Stat. § 518B.01, subd. 4(a), the district court found that respondent is a reputable adult over 25 and determined that it was in A.G.’s best interest that a petition be brought on her behalf.

Appellant concedes that that finding was made, but argues that the district court “explicitly stated that [respondent] is not a ‘family or household member’ of the minor child.” Respondent contends that she is a “family or household member” because she resided with appellant and A.G. from 1999 until 2007<sup>1</sup> and thus is a “family or household member” because they “have resided together in the past.”<sup>2</sup> Appellant argues this “ignore[s] the express statement” of the district court and that such an interpretation of the statute would negate the requirement of a closer familial or blood relationship than

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<sup>1</sup> A.G.’s biological mother died when she was approximately 20 months old. On April 2, 1999, when A.G. was two years old, appellant and respondent were married, and the three of them lived together. Appellant and respondent divorced in 2007. A.G. also resided with respondent from October 2009 to June 2010.

<sup>2</sup> Because respondent was also married to appellant, she is also a “family or household member” given the inclusion of former spouses in the definition. *See* Minn. Stat. § 518B.01, subd. 2(b)(1).

exists between A.G. and respondent. Appellant contends that this court must look to the entire statute for context and argues that the supreme court's recent decision in *Schmidt ex rel. P.M.S. v. Coons*, 818 N.W.2d 523 (Minn. 2012), limits the reach of who can bring forth a petition.

We disagree. Because standing is a question of law that is subject to de novo review, we are not bound by, nor are we required to give deference to, the district court's legal conclusions. *See Shirk v. Shirk*, 561 N.W.2d 519, 521 (Minn. 1997). Thus, the district court's determination that respondent is not "family or a household member" is not binding on this court.

Based on the plain language of the statute, we disagree with appellant's argument that respondent does not have a sufficiently close familial or blood relationship with A.G. to be considered a "family or household member." "If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language. If a statute is ambiguous, we apply other canons of construction to discern the legislature's intent." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citation omitted). Here, the statute is not ambiguous. The statutory definition of "family or household members" includes seven possible relationships, including spouses and former spouses and individuals who have resided together in the past. Minn. Stat. § 518B.01, subd. 2(b)(1), (4). Appellant, respondent, and A.G. lived together from 1999 until 2007. Thus, a plain reading of the statute would include respondent as a "family or household member."

Appellant's reliance on *Schmidt* is misplaced. *Schmidt* involved a father petitioning for an OFP on behalf of his son after his son witnessed his grandfather abuse his mother. 818 N.W.2d at 525. There was no finding that the child had been the victim of domestic abuse. *Id.* At issue in *Schmidt* was whether an OFP may be issued to a nonvictim of domestic abuse. *Id.* at 526-27. Following its examination of the legislative intent of the statute, the supreme court concluded that "an OFP may be granted only to a victim of domestic abuse" and did not address the standing issue. *Id.* at 529. *Schmidt* is distinguishable because the district court here specifically found that A.G. had been the victim of domestic abuse while living with appellant.

## II.

Appellant argues that the record does not support the factual findings made by the district court that he inflicted or intended to inflict fear of imminent harm and that the underlying conduct is now stale. "The decision to grant an OFP under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 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) (citation and quotation omitted). "[W]e review the record in the light most favorable to the district court's findings, and we will reverse those findings only if we are left with the definite and firm conviction that a mistake has been made." *Id.* at 99 (quotation omitted). We will not reconcile conflicting evidence or decide issues of witness credibility, as those issues are "exclusively the province of the factfinder." *Id.* (quotation omitted).

A petitioner seeking an OFP must allege domestic abuse. Minn. Stat. § 518B.01, subd. 4(b) (2012). “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,” or (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.” Minn. Stat. § 518B.01, subd. 2(a) (2012). An OFP 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), that the district court may infer from the totality of the circumstances, *Pechovnik*, 765 N.W.2d at 99. “A verbal threat, depending on the words and the circumstances, can also inflict ‘fear of imminent physical harm, bodily injury or assault’ [under the domestic abuse act].” *Hall v. Hall*, 408 N.W.2d 626, 629 (Minn. App. 1987), *review denied* (Minn. Aug. 19, 1987).

The district court granted the OFP based on its finding that acts of domestic abuse had occurred, specifically finding that

[appellant] has inflicted upon the minor child fear of imminent physical harm, bodily injury, or assault. [Appellant] has threatened the minor child by stating to her “I gave you live [sic] and I can take it away.” This threat taken together with [appellant]’s repeated history of drinking and behaving with inappropriate conduct while in the child’s presence including making a threat that he could kill other persons, and getting into arguments with the minor child where he raised his open hand or clenched his fists inflicted upon the child fear of imminent physical harm. His actions constitute domestic abuse.

These findings are supported by A.G.’s testimony, which the district court found to be credible. The district court stated that it had “no doubt” that appellant made a

threatening statement and concluded that such a statement would “create fear of imminent physical harm in anyone.” Although appellant contends that the statement was a joke stemming from a Bill Cosby comedy routine, the district court found that the statement, taken in combination with the other incidents, created “fear of imminent physical harm” in A.G. A verbal threat put in context of the surrounding circumstances can inflict fear. *See id.* at 628-29 (upholding the district court’s finding that the verbal threat inflicted fear).

The record reflects that appellant acted aggressively toward his daughter. The district court found that he has a “repeated history of drinking and behaving with inappropriate conduct while in the child’s presence.” The district court also found that appellant made a “threat that he could kill other persons, and [that] getting into arguments with the minor child where he raised his open hand or clenched his fists inflicted upon the child fear of imminent physical harm.” Considering the totality of the circumstances, the district court concluded that appellant’s actions “constitute domestic abuse” despite the fact that appellant never physically touched A.G.

Appellant’s primary contention appears to be that A.G. is not telling the truth. He argues that the district court erred by relying on A.G.’s allegations. But “the district court is in the best position to judge the credibility of the witnesses and make determinations in the face of conflicting testimony and must be given due deference.” *Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (citing *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988)), *review denied* (Minn. Oct. 24, 2001); *see also Pechovnik*, 765 N.W.2d at

99. The district court made an express credibility determination and found that A.G.'s allegations of abuse were credible. We will not reweigh those findings.

Appellant further contends that the district court relied on underlying conduct that is stale, pointing to one statement that took place two years before the hearing. We disagree. There is no bright-line rule for how recent the conduct must be, and this case is unlike those in which we identified staleness. *See Bjergum v. Bjergum*, 392 N.W.2d 604 (Minn. App. 1986) (involving two-year-old allegations); *Kass v. Kass*, 355 N.W.2d 335 (Minn. App. 1984) (involving four-year-old allegations). The district court stated that it relied on “the overall picture,” including evidence of appellant’s conduct in the 3- to 4-month period before the hearing.

**Affirmed.**