STATE OF MINNESOTA
IN COURT OF APPEALS

A07-166

Amanda Svendsen, individually and o/b/o M.S-S.,
Respondent,

vs.

Joshua Allen Strange,
Appellant.

Filed February 26, 2008
Affirmed
Ross, Judge

Crow Wing County District Court
File No. F4-06-3520

Amanda Svendsen, 921 28th Street Southeast, Brainerd, MN 56401 (pro se respondent)

Eric C. Nelson, 400 Second Avenue South, Suite 700, Minneapolis, MN 55401 (for appellant)

Considered and decided by Ross, Presiding Judge; Lansing, Judge; and Crippen, Judge.*

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

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

ROSS, Judge

Joshua Strange appeals from a one-year order for protection (OFP) granted in favor of his daughter, M.S-S., and his daughter's mother, Amanda Svendsen. Predicated on the district court's finding that Strange domestically abused Svendsen, the OFP bars Strange from any contact with Svendsen or M.S-S. except for supervised parenting visits with M.S-S. Strange argues that because there is no record evidence of any acts of abuse against M.S-S., the district court should not have restricted his parenting time. And he contends that the district court's factual finding that he abused Svendsen is clearly erroneous. Because the district court's finding of abuse against Svendsen is not clearly erroneous, and because a finding of abuse against M.S-S. is not required to restrict parenting time, we affirm the district court's order for protection.

FACTS

Joshua Strange and Amanda Svendsen had a short, strained relationship. They lived together from 2004 until August or September 2006, and have a daughter, M.S-S., born on June 1, 2005.

According to the district court's findings and hearing testimony, Strange has at times acted aggressively or with a degree of violence toward Svendsen. In 2005 Strange pushed Svendsen down to the floor when Svendsen was approximately seven months pregnant with M.S-S. On a different occasion, Strange punched a hole in the wall of their apartment. Shortly after they separated, Strange forcefully struck the trunk of Svendsen's car with a bag containing baby-food jars, leaving a dent. In November 2006 Strange

yelled at Svendsen during a custody-related disagreement, and he slammed a door so hard that pictures fell from a nearby wall. In her petition for an order for protection, Svendsen alleged that at three o'clock in the morning on December 14, 2006, Strange called Svendsen's sister, with whom Svendsen sometimes stays. He asked her if Svendsen was in the house. Strange was intoxicated and angry and said that he was standing just outside.

The court issued the OFP on December 22, 2006. The OFP included a finding that Strange domestically abused Svendson, but not that he abused M.S-S. It restricted Strange's parenting time to supervised visits and ordered that he have no other contact with Svendsen or M.S-S. for one year. Strange appeals from that order.

D E C I S I O N

I

At first glance at the calendar, it may appear that this appeal is moot. A case is moot if an appellate court "is unable to grant effectual relief." *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). The district court's OFP issued on December 22, 2006, lasted for one year, expiring on December 21, 2007.[1] Because the OFP has expired, we are unable to grant effectual relief. But a case that otherwise may be deemed moot is not moot if there is "evidence that collateral consequences [may result] from a judgment." *In re McCaskill*, 603 N.W.2d 326, 329 (Minn. 1999). Where real and substantial limitations

[1] Appeals involving custody or the termination of parental rights are given expedited review. *See* Minn. App. Spec. R. Pract. 1. Other appeals may be expedited for good cause. *Id.* Strange did not move to expedite his appeal for good cause. He did, in contrast, file a motion *to extend* the time for briefing. *See* Order No. A07-166 (Minn. App., Feb. 21, 2007).

will arise from a judgment, actual evidence of collateral consequences is presumed. *See, e.g.*, *In re McCaskill*, 603 N.W.2d at 329 (holding that discharge from civil commitment before completion of appeal does not render appeal moot because of a civil commitment's collateral consequences); *Morrissey v. State*, 286 Minn. 14, 16, 174 N.W.2d 131, 133 (1970) (holding collateral consequences attach to criminal conviction because of the "the stigma of conviction").

There are potential collateral consequences apparent here, and we deem this appeal as not precluded on mootness grounds. A future custody dispute between Strange and Svendsen may be substantially impacted by the finding of domestic abuse of Svendsen by Strange. Custody determinations are based on the best interests of the child, and one statutory criterion for considering a child's best interest is "the effect on the child of the actions of an abuser, if related to domestic abuse . . . that has occurred between the parents." *See* Minn. Stat. § 518.17, subd. 1(a)(12) (2006). Because the district court's OFP was predicated on its finding that acts of domestic abuse have occurred between M.S-S.'s parents, the OFP may have collateral consequences, and we therefore consider this appeal on the merits.

II

Strange raises a fact-based challenge to the OFP. We review a district court's decision to grant an OFP for an abuse of discretion. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926–27 (Minn. App. 2006). A district court abuses its discretion when its findings are unsupported by the record or when it misapplies the law. *Id.* at 927. We review the record in the light most favorable to the district court's

findings, and we will reverse only if we have a "definite and firm conviction that a mistake has been made" in reaching those findings. *Id*.

Strange argues that we should reverse the district court because the record contains no evidence of domestic abuse against Svendsen. The Minnesota Domestic Abuse Act defines domestic abuse as the infliction of bodily harm or the infliction of fear of imminent bodily harm against a family member or housemate. Minn. Stat. § 518B.01, subd. 2 (2006); *see also Bjergum v. Bjergum*, 392 N.W.2d 604, 605–06 (Minn. App. 1986). Strange argues that there is no evidence of present harm or intent to do imminent harm, and therefore the district court should not have granted the OFP.

Although the evidence of domestic abuse is not overwhelming, it supports the finding. There was testimony that, if believed, could lead a reasonable factfinder to conclude that Strange intentionally caused fear of imminent bodily harm to Svendsen. We recognize that Strange contests some of the testimony, but viewing the record in a light favorable to the district court's order, we accept this testimony as true for the purposes of the appeal. In one episode a few weeks before Svendsen sought the OFP, Strange and Svendsen were having a custody-related argument, and Strange began clenching his fists tightly, pacing angrily, and yelling loudly enough to be heard in other parts of the house. He also slammed the door with great force in demonstrative hostility. A reasonable factfinder may conclude that this episode caused fear of imminent bodily harm. *See* Minn. Stat. § 518B.01, subd. 2(a). And less than a week before Svendsen's filing for the OFP, Strange stood outside Svendsen's sister's house at three o'clock in the

morning, angry and drunk, demanding to be told if Svendsen was inside. More recently, Svendsen alleged that Strange had been calling her things like "bitch" and "whore."

These actions, when considered in light of Strange's shoving of Svendsen to the floor while she was pregnant, support a conclusion that Strange had an extant intention to cause fear of imminent harm in Svendsen. Although Strange had character witnesses who testified that Svendsen described behavior that was atypical, we must infer that the district court disbelieved or discounted this testimony and found Svendsen's account valid, because it granted the OFP. The district court's reasonable credibility determinations and weighing of the evidence will withstand challenge on appeal. *See Magnuson v. Cossette*, 707 N.W.2d 738, 744 (Minn. App. 2006) ("This court will not reverse the district court merely because we view the evidence differently."). Factual findings based on those determinations will be reversed only if we have a "definite and firm conviction that a mistake has been made." *Braend*, 721 N.W.2d at 927. Because testimony in the record supports the district court's factual finding that Strange intended to cause fear in Svendsen, we do not have a firm conviction that the district court made a mistake by finding that abuse by intimidation occurred. We therefore affirm the OFP.

III

Strange also argues that because there was no evidence of domestic abuse against M.S-S., the district court misapplied the law when it restricted his parenting time with M.S-S. He contends that restricting his parenting time solely based on domestic abuse of Svendsen is contrary to the language of Domestic Abuse Act. According to Strange, the Act requires that restricted parenting time requires a finding of abuse of the child.

Strange misreads the statute. *See* Minn. Stat. § 518B.01, subd. 6(a)(4) (2006) ("If the court finds that the safety of the victim or the children will be jeopardized by unsupervised or unrestricted parenting time, the court shall condition or restrict parenting time."). Section 518B.01 authorizes a court to grant relief with a focus on "primary consideration to the safety of the victim and the children." *Id.* By defining the trigger as the "safety of the victim *or* the children," the statute establishes that a finding of abuse of a nonchild victim is sufficient to allow the district court to restrict parenting time. Although there was no evidence that Strange domestically abused M.S-S., the district court did find that Strange abused Svendsen. This finding is sufficient support under section 518B.01 for the district court to restrict Strange's parenting time. *See id.* We affirm the district court's restriction of Strange's parenting time based on his treatment of Svendsen.

Affirmed.