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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0643**

Autumn Michelle Karasek, petitioner,
Respondent,

vs.

Jason James Karasek,
Appellant.

**Filed March 24, 2009
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-FA-08-824

Autumn Michelle Karasek, 11013 Louisiana Court East, Champlin, MN 55316 (pro se respondent)

Allan H. Caplan, Charles F. Clippert, Caplan Law Firm, P.A., 525 Lumber Exchange Building, 10 South Fifth Street, Minneapolis, MN 55402 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Connolly, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

Jason James Karasek and his former wife, Autumn Michelle Karasek, had a heated argument after she told him that she was pregnant. The district court issued an order for

protection (OFP) against Jason Karasek based on a finding that he inflicted on her fear of physical harm. For the reasons stated below, we affirm.

FACTS

Jason Karasek and Autumn Karasek were divorced in June 2006. Together they have one son, who was born in 2003.

On January 20, 2008, Autumn Karasek went to Jason Karasek's residence to pick up their son. While there, Autumn Karasek informed Jason Karasek that, through a relationship with another man, she had become pregnant. According to her testimony, Jason Karasek became enraged, criticized her for being lazy and unemployed, and screamed at her about his being required by their dissolution decree to contribute to her medical expenses.

Autumn Karasek testified that, during the argument, "Jason came at me, puffed his chest out and asked me if I wanted to go, as if I wanted to fight him." She also testified that he bumped her and pushed her backward. In his testimony, Jason Karasek could not recall whether he had puffed out his chest or whether he had asked her "to go." Jason Karasek and his two brothers, who were present during the argument, testified that Jason Karasek never touched Autumn Karasek. Three witnesses, however, testified that one of Jason Karasek's brothers tried to intervene and that Jason Karasek shoved him or swung at him. Autumn Karasek did not sustain any physical injuries during the argument. But she testified that she feared for her physical safety during the incident, saying, "If his brothers weren't there, I don't think I'd be here."

Autumn Karasek also testified that, in early February 2008, Jason Karasek made numerous “ranting and raving” telephone calls to her that she perceived to be threatening. She testified that, on one particular day, he told her by telephone that he knew the location and exact hours of her work schedule. Jason Karasek admitted making some of the calls but testified that the calls were not threatening in nature. Autumn Karasek testified, “I’m fearful to this day I can be killed by him.” She testified that she put chains on her doors, carries pepper spray, and was “looking at stun guns on the internet.”

On February 8, 2008, Autumn Karasek petitioned for an OFP. The district court heard testimony from the parties on February 15, 2008, and issued an OFP the same day. Jason Karasek appeals.

DECISION

Jason Karasek argues that the district court erred by granting the OFP because the evidence does not support the district court’s findings. A district court’s findings of fact will not be overturned unless clearly erroneous. *McIntosh v. McIntosh*, 740 N.W.2d 1, 10 (Minn. App. 2007). If the evidence is in conflict, this court defers to the district court’s credibility determinations. Minn. R. Civ. P. 52.01; *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988); *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). 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 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).

A petitioner seeking an OFP under chapter 518B of the Minnesota Statutes must allege and prove domestic abuse. Minn. Stat. § 518B.01, subd. 4(b) (2008). The Minnesota Domestic Abuse Act defines “domestic abuse” 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

Minn. Stat. § 518B.01, subd. 2(a) (2008). This statutory language requires that a party show “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 intent to inflict fear may be inferred from conduct. *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989).

The district court made a finding of fact that Autumn Karasek proved, by the preponderance of the evidence, that Jason Karasek inflicted fear of harm and that domestic abuse occurred. The district court specifically found that Autumn Karasek’s testimony was credible and that “[t]he totality of the circumstances . . . suggest[s] that Petitioner’s fear of Respondent is credible and reasonable.” This court must defer to the credibility determinations made by the district court. *See* Minn. R. Civ. P. 52.01; *Sefkow*, 427 N.W.2d at 210.

The district court’s finding that domestic abuse occurred is supported by evidence that Jason Karasek threatened Autumn Karasek during the January 20, 2008, incident. It is undisputed that Jason Karasek yelled at Autumn Karasek while standing very close to

her, that Jason Karasek's brother physically intervened to separate Jason Karasek and Autumn Karasek, and that Jason Karasek shoved his brother. Jason Karasek does not deny walking toward Autumn Karasek with his chest puffed out and asking her if she "wanted to go." Autumn Karasek testified that she interpreted his statement to be an invitation to engage in a physical fight. The district court credited her testimony that Jason Karasek had "challenged her to a physical fight."

The district court's finding that domestic abuse occurred also is supported by evidence that Jason Karasek threatened Autumn Karasek with telephone calls in February 2008. The district court credited Autumn Karasek's testimony that Jason Karasek made statements regarding his knowledge of her work location and work schedule. The district court also credited Autumn Karasek's testimony that these statements were threatening. Although Jason Karasek disputed the nature of those statements, we must defer to the district court's credibility determinations. *See* Minn. R. Civ. P. 52.01; *Sefkow*, 427 N.W.2d at 210. The evidence permits an inference that Jason Karasek intended "to inflict fear." *Boniek*, 443 N.W.2d at 198.

The district court's finding that domestic abuse occurred is further supported by evidence that Autumn Karasek actually feared Jason Karasek because of his conduct. She testified, "I don't know if I can protect myself anymore from him If I wasn't absolutely terrified of him, I wouldn't have went to this extreme."

The evidence, when viewed in the light most favorable to the district court's findings, is sufficient to satisfy the statutory requirement of "fear of imminent physical harm, bodily injury, or assault." *See* Minn. Stat. § 518B.01, subd. 2(a)(2). Because the

evidence establishes domestic abuse as defined in section 518B.01, subdivision 2(a), the district court did not abuse its discretion by granting the OFP.

Affirmed.