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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1457**

Tenzin Dasal Khangsar, for herself
and on behalf of her minor child Dennis Tenzin Zrust, petitioner,
Respondent,

vs.

Duwayne James Zrust,
Appellant.

**Filed May 19, 2009
Affirmed
Muehlberg, Judge***

Hennepin County District Court
File No. 27FA084099

Lisa M. Lamm, Foley & Mansfield, P.L.L.P., Suite 1200, 250 Marquette Avenue,
Minneapolis, MN 55401 (for respondent)

Derk Karl Schwieger, Derk Karl Schwieger, L.L.C., Suite 220, 7800 Metro Parkway,
Bloomington, MN 55425 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Bjorkman, Judge; and
Muehlberg, Judge.

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

UNPUBLISHED OPINION

MUEHLBERG, Judge

On appeal in this dispute regarding an order for protection (OFP), appellant argues that the grant of the OFP was improper because (1) the record does not support awarding the OFP; (2) the district court used an interpreter who was not certified; and (3) the district court's questioning of appellant was an abuse of discretion. Because there was no abuse of discretion, we affirm.

FACTS

Respondent Tenzin Khangsar is from India, but is of Tibetan origin. After respondent was introduced to appellant Duwayne James Zrust by her aunt, the two spent a year corresponding. Appellant eventually traveled to India to meet respondent, where respondent claims that a marriage was arranged. The parties subsequently wed, and respondent moved to the United States to live with appellant. The parties now have a minor child.

On June 23, 2008, respondent, on her own behalf and on behalf of the party's minor child, petitioned for an order for protection (OFP) against appellant. Prior to conducting an evidentiary hearing on the matter, the district court conducted a search for state-certified Tibetan interpreters. Over appellant's objection, non-certified Wangyal Ritdekura was selected to interpret the proceedings. The district court found that there was a lack of certified Tibetan interpreters, and that despite his lack of certification as an interpreter, Ritdekura was qualified to interpret the proceedings.

At the evidentiary hearing, respondent testified that appellant forbade her from speaking Tibetan at their home and that appellant threatened to send her back to India. Respondent also testified that in March 2007, appellant became angry after observing a picture of the couple's son in Tibetan dress. According to respondent, appellant "got really mad," pulled her hair, and threatened to kill her if she called 911. Respondent then called her aunt and requested that her aunt call 911. Although two police officers arrived at the residence shortly thereafter, respondent claimed that she did not press charges because she "was dead scared."

Respondent also testified that after the March 2007 incident, appellant increasingly engaged in threatening conduct by raising his hand as if he were going to strike her. Respondent claimed that when she would attempt to leave the home during an argument, appellant would grab her and pull her down. Respondent further testified that in June 2008, she began to experience a severe headache after an argument with appellant. Respondent claimed that when she attempted to rest, appellant "would continue barking, continue shouting" at her. According to respondent, she went to the hospital to be treated for her headache, but when she was released, she refused to return home with appellant because she was afraid that appellant would injure her.

Appellant testified that he is a registered nurse, and that his licensure requirements are affected by findings made against him for claims of domestic violence. Appellant also testified that respondent filed for an OFP in March 2007, but that she later agreed to dismiss the OFP. Appellant further testified that respondent was ill in June 2008, and that he made sure she received the necessary medical care. Although appellant admitted

that he prefers that respondent not speak Tibetan in their home, that he sometimes “hugged” her when she was attempting to leave the home, and that he had previously threatened to send respondent back to India, appellant denied the allegations of domestic abuse.

Following the July 1, 2008 hearing, the district court found that “although the question is close, [respondent] is legitimately in fear of imminent physical harm from [appellant], given the record before the Court.” The court then issued a six-month OFP on July 2, 2008. This appeal followed.

DECISION

I.

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 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).

A petitioner seeking an OFP under chapter 518B 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 “either a showing of present harm, or an intention on the part of appellant to do present harm.” *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).

Appellant argues that there was insufficient evidence to warrant the district court’s decision to grant the OFP. To support his claim, appellant argues that respondent’s testimony was not credible because her testimony was vague and she did not allege specific incidents of abuse. Appellant also asserts that he credibly denied any allegations of abuse, and that the alleged incidents of March 2007 were stale.

We agree with the district court that the case is “close.” But respondent testified concerning an incident in March 2007, where appellant pulled her hair and threatened to kill her if she called 911. Respondent also testified that more recently appellant often raises his hand as if he is going to strike her and that respondent is afraid that appellant will hit her. Respondent further testified that appellant restrains her when she attempts to leave the house during arguments with appellant and that appellant’s ongoing conduct causes her fear. If believed, this testimony is sufficient to support a finding of domestic

abuse. Although appellant denied respondent's allegations, the district court apparently did not find appellant's testimony to be credible. *See Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001) (stating that the district court is in the best position to evaluate the credibility of a witness and this court defers to the district court's credibility determination), *review denied* (Minn. Oct. 24, 2001). Accordingly, the district court did not abuse its discretion in granting the OFP.

II.

Appellant argues that the district court abused its discretion in using an interpreter who was not certified. Decisions involving interpreters are within the district court's discretion. *State v. Perez*, 404 N.W.2d 834, 838 (Minn. App. 1987), *review denied* (Minn. May 20, 1987).

The General Rules of Practice require that district courts appoint interpreters who are "certified" by the State Court Administrator's office and are listed on a statewide roster. Minn. R. Gen. Pract. 8.02, 8.04. Interpreters who are both certified and listed on the statewide roster are "presumed" competent. *Id.*, 8.02(a). If a district court, after making "diligent efforts," is unable to find a certified interpreter, then the district court "shall appoint a non-certified court interpreter who is otherwise competent" and who is listed on the statewide roster. *Id.*, 8.02(b). "Only after the court has exhausted the requirements of Rule 8.02(a) and (b) may the court appoint a non-certified foreign language interpreter who is not listed on the Statewide Roster and who is otherwise competent." *Id.*, 8.02(c).

Appellant argues that the district court's use of a non-certified interpreter was an abuse of discretion because the court failed to exhaust the requirements of rule 8.02(a) and (b) before appointing a non-certified interpreter who is not listed on the statewide roster. We disagree. The record reflects that there was a lack of Tibetan interpreters and Ritdekura was the only Tibetan interpreter available to interpret the proceedings. Both the court and appellant's attorney questioned the interpreter about his qualifications, and the record reflects that Ritdekura was qualified to interpret the proceedings. Although Ritdekura admitted that he was not certified in Minnesota as an interpreter, Ritdekura testified that he is fluent in both English and Tibetan, and that he has interpreted in many court proceedings in Hennepin County. Accordingly, the district court did not abuse its discretion in using a non-certified interpreter.

III.

The district court asked appellant several questions after respondent's initial cross-examination. The district court is authorized by the rules of evidence to question witnesses. Minn. R. Evid. 614(b). Questioning to clarify testimony is a proper exercise of the court's power. *Teachout v. Wilson*, 376 N.W.2d 460, 465 (Minn. App. 1985), *review denied* (Minn. Dec. 30, 1985). This is because "[t]rials . . . are not simply courtroom dramas but a search for justice. If a [district] court is doubtful about the testimony of any witness in a court trial, he may have not only the right but the duty to interrogate a witness." *Olson v. Blue Cross & Blue Shield*, 269 N.W.2d 697, 702 (Minn. 1978). Inappropriate questioning by a district court, however, can rise to the level of reversible error. *State ex.rel. Hastings v. Denny*, 296 N.W.2d 378, 379 (Minn. 1980).

Appellant argues that the district court abused its discretion by assuming the role of advocate by cross-examining appellant, a function reserved for respondent's counsel. But appellant failed to object to the questioning and, thus, forfeited his right to appeal the issue. *State v. Olisa*, 290 N.W.2d 439, 440 (Minn. 1980) (holding any error by the district court in interrogating the defendant was waived by the failure to object). Moreover, the record reflects that the district court's questioning of appellant does not rise to the level of reversible error. The record reflects that the district court asked appellant several questions for purposes of clarifying the issues and testimony specifically related to the alleged incidents of domestic abuse. After the district court finished his questions, counsel for both appellant and respondent had the opportunity to further examine the witness. The record further reflects that the district court also asked some questions of respondent. Accordingly, appellant failed to show that the district court's conduct constituted an abuse of discretion.

Affirmed.