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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-0196**

In the Matter of: Jennifer Louise Edwards,  
on behalf of Tory Lyne Edwards and Mari Rose Edwards, petitioner,  
Respondent,

vs.

Jon Stephen Edwards,  
Appellant.

**Filed August 18, 2009  
Affirmed  
Minge, Judge**

Meeker County District Court  
File No. 47-FA-08-1109

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appellant)

Considered and decided by Minge, Presiding Judge; Stoneburner, Judge; and  
Collins, Judge.\*

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\* 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## **UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant challenges the issuance of an order for protection (OFP), arguing that the record does not support the district court's finding of domestic abuse. We affirm.

### **FACTS**

Appellant Jon Stephen Edwards and respondent Jennifer Louise Edwards married in 1993 and had two children. In August 2008, they separated and divorce proceedings were commenced. On August 21, appellant went to respondent's Litchfield residence to pick up the children for parenting time. While there, appellant and respondent argued, appellant threw his cell phone at respondent and left without the children. Later that day, he returned and picked up the children. While driving from Litchfield to his home in Darwin, appellant argued with his 14-year-old daughter, allegedly yelling at her in a loud, angry voice. He stopped the car on the highway and told her to get out and walk toward Darwin. She started walking back to Litchfield. Appellant then got out of the vehicle and yelled at the girl. The daughter claimed that she was terrified.

After a passing motorist stopped and threatened to call the police, appellant grabbed his daughter and pushed her into the backseat, scaring, but not injuring her. While in the car, appellant swung his arm back toward the daughter saying, "I should slap you b-tch." Although appellant did not strike the girl and did not extend his arm into the back seat area of the car, the daughter testified that (1) appellant was angry during these exchanges; (2) she believed that appellant intended to slap her; (3) she was afraid; and (4) she feared for her physical safety.

On August 22, 2008, respondent petitioned for an OFP on behalf of her children, and an emergency OFP was granted. After a January 20, 2009 hearing,<sup>1</sup> the district court found that domestic abuse occurred when appellant threw his cell phone and during the incident on the highway, and granted a long-term OFP that prohibited appellant from entering respondent's residence or harming or threatening to harm respondent and the children. The OFP also gave respondent custody of the children and limited appellant's parenting time. The district court found this was a "close case" but that appellant was "an imposing figure" and the daughter was "not being faint of heart in having fear of her father." The district court determined that appellant's language and his attempt or threat to slap his daughter, which made the daughter fear that she would be hit, is what "tipped the case." This appeal follows.

## DECISION

The sole issue is whether the district court abused its discretion in granting the OFP. The decision to grant an OFP under the Domestic Abuse Act, Minn. Stat. ch. 518B, is discretionary. *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 not supported by the record or it misapplies the law. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006). We review the record in the light most favorable to the district court's findings and will reverse these findings only if this court is left with the

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<sup>1</sup> We note that, though the OFP hearing occurred several months after appellant's conduct and the emergency OFP was granted, the timetable apparently resulted from scheduling problems or abandonment of the matter by respondent. The issue of whether this time lapse affects the sufficiency of the evidence supporting issuance of the OFP is not before us.

definite and firm conviction that a mistake has been made. *Chosa*, 693 N.W.2d at 489. We defer to the district court’s credibility determinations and “will not reverse merely because we view the evidence differently.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). “As a remedial statute, the Domestic Abuse Act receives liberal construction” in favor of the injured person. *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992).

District courts are authorized to issue an OFP to “restrain the abusing party from committing acts of domestic abuse.” Minn. Stat. § 518B.01, subd. 6(a)(1) (2008). Domestic abuse includes: “(1) physical harm, bodily injury, or assault; [or] (2) the infliction of fear of imminent physical harm, bodily injury, or assault by one family or household member against another.” *Id.*, subd. 2(a)(1), (2).

The dispositive factual consideration in this case is whether the daughter had a fear of imminent physical harm, not whether appellant intended to inflict or actually inflicted physical harm. In *Hall v. Hall*, we stated that “[a] verbal threat, depending on the words and the circumstances, can . . . inflict fear of imminent physical harm, bodily injury or assault.” 408 N.W.2d 626, 629 (Minn. App. 1987) (quotation omitted), *review denied* (Minn. Aug. 19, 1987). In *Hall*, we determined that a husband’s threats—which included statements such as “you better stop f---ing with me; if you don’t stop f---ing with me you’ll end up in a box[,]” and “[i]f you’re going to f--- around you’re going to get it”—were “sufficiently specific and violent to support [his wife’s] claim of fear of physical harm.” *Id.* at 628-29.

Appellant argues that his daughter was being a “brat” and he was merely acting as a parent in disciplining her. We agree with appellant that parents are given wide latitude to discipline children and may apply “reasonable force” to “exercise” their “lawful authority.” Minn. Stat. § 609.06, subd. 1(6) (2008). However, the district court rejected his characterization of his actions as discipline. The district court’s findings are supported by the record, given appellant’s demonstrations of anger throughout the day, including (1) throwing the cell phone; (2) ordering his daughter out of the car and to walk along the highway; (3) exiting the vehicle to yell at her to the point of terrifying her and alarming a passerby; (4) grabbing his daughter and shoving her into the backseat; (5) threatening to slap her; and (6) angrily calling her a “b-tch.” On this record, the district court’s finding that the daughter had a fear of immanent harm is not clearly erroneous. Therefore, the district court acted within its discretion by ordering the OFP.

Appellant argues that another policy concern should be construed to limit the district court’s discretion. This concern is that applicants improperly seek OFPs to prejudice the other party in dissolution and custody proceedings. It is not a novel charge. We agree that it would be deplorable gamesmanship to seek an unjustified OFP merely to gain an advantage in dissolution or custody proceedings. However, here the timing of the dissolution proceedings and the content of the order provide little support that respondent resorted to this tactic. Further, appellant’s argument implies that the pendency of a dissolution proceeding limits the issuance of an OFP. The Domestic Abuse Act specifically provides, “A petition for relief may be granted, regardless of whether there is a pending action between the parties.” Minn. Stat. § 518B.01, subd. 4(d) (2008). Even if

an OFP has an impact on other proceedings, victims of domestic abuse who are involved in marital dissolutions have a right to findings of abuse and issuance of an OFP. Further, the issuance of an OFP is not determinative of child custody. That is governed by the best interests of the child, which includes scrutiny of 13 separate factors. *See* Minn. Stat. § 518.17, subd. 1 (2008).

Based on this record and the discretion provided to the district court to determine the credibility of the parties, we conclude that the district court did not abuse its discretion in granting the OFP.

**Affirmed.**

Dated: