STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0889

In re the Matter of: Svetlana Yuryevna Slupitskaya,
and o/b/o A. G. S. and K. M. H., petitioner,
Respondent,

vs.

Karl H. Hagglund,
Appellant.

Filed September 8, 2009
Affirmed in part and reversed in part
Toussaint, Chief Judge

St. Louis County District Court
File No. 69VI-FA-07-137

Svetlana Yuryevna Slupitskaya, 9056 Highway 25, Angora, MN 55703 (pro se respondent)

Kimberly J. Corradi, Law Offices of James Perunovich, P.F., 402 East Howard Street, Hibbing, MN 55746 (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Toussaint, Chief Judge; and Stauber, Judge.

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

TOUSSAINT, Chief Judge

Appellant Karl H. Hagglund claims that the district court abused its discretion by issuing an order for protection against him, arguing that the district court's finding of

present harm to his stepdaughter was in error and that the extension of the order for protection to restrict his parenting time with his other minor child was unsupported by the record. Because the district court did not abuse its discretion by issuing the order for protection as to the stepdaughter, we affirm in part. Because the district court did abuse its discretion in extending the order for protection to the youngest child, we reverse in part.

D E C I S I O N

"The decision to grant an [order for protection] OFP under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 . . . is within the district court's discretion." *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926 (Minn. App. 2006) (citation omitted). "A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law." *Id.* at 927. "As a remedial statute, the Domestic Abuse Act receives liberal construction" in favor of the injured party. *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992).

The Domestic Abuse Act states that domestic abuse 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.3d 335, 337 (Minn. App. 1984). Therefore, an order for protection is justified when the evidence shows a person committed physical harm, bodily injury, or assault, or manifests a present intention to inflict fear of imminent physical harm, bodily injury, or assault on a family member. Minn. Stat. § 518B.01 (2008); *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009).

I.

The district court issued an order for protection requiring appellant to have no contact with A.G.S., his then 16-year-old stepdaughter, on the petition of respondent Svetlana Yuryevna Slupitskaya, and o/b/o A. G. S. and K. M. H. The order was based on the finding that appellant engaged in inappropriate behavior with A.G.S., including the purchase of "video games to obtain A.G.S's sexual compliance," "touching and humping," and ultimately digital penetration. The district court concluded that "the harm to A.G.S. while occurring over one year ago remains a present harm."

Appellant contends that the district court abused its discretion by granting an order for protection because the evidence in the record does not support a finding of present harm. Specifically, appellant argues that the evidence showed there had been no contact between himself and A.G.S. for a period of over eight months prior to the petition for the order for protection and 15 months prior to the district court's issuance of the order for protection, and therefore any harm was too remote to satisfy the domestic abuse statute.[1] We disagree.

In our review of an order for protection, we "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." *Braend*, 721 N.W.2d at 927 (quotation omitted). The district court's findings of fact will not be set

[1] Appellant also challenges the district court's credibility assessment of A.G.S. We do not decide issues of witness credibility, which are exclusively the province of the factfinder. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). The district court's findings clearly and repeatedly indicate that the district court found A.G.S.'s testimony credible. We defer to this credibility determination.

aside unless they are shown to be clearly erroneous. Minn. R. Civ. P. 52.01. "We will not reverse merely because we view the evidence differently." *Gada*, 684 N.W.2d at 514.

But "[w]here the record fails to establish appellant's present intention to do harm or inflict fear of harm, we have no alternative but to reverse the protection order." *Bjergum v. Bjergum*, 392 N.W.2d 604, 606 (Minn. App. 1986) (quotation omitted). *See, e.g.*, *Kass*, 355 N.W.2d at 337 (reversing order for protection based upon a four-year gap between abuse and petition filing). But there is no bright-line rule regarding the length of time permissible between the harm and the petition for an order for protection.

Unlike *Kass*, the case before us does not present a years-long absence of physical abuse prior to the filing of the petition. At the time of trial, appellant was still married to A.G.S.'s mother and lived within a mile of A.G.S. The district court found that the abuse had occurred both while appellant lived with A.G.S. and while they lived separately. The district court also found that appellant purchased video games "to obtain A.G.S.'s sexual compliance" and noted that "A.G.S. exhibited and testified by tape to reasonable fear of imminent harm" at the hands of appellant. The district court, noting that it had been less than one year since the last episode of inappropriate touching, found "a reliable history" of the abusive events and determined that such events were ongoing, as was the harm.

Under the deferential standard of review of an order for protection, we conclude that the district court did not abuse its discretion by issuing the order for protection as to A.G.S. The evidence of harm was sufficient for the district court to infer the existence of present harm based on the totality of the circumstances, which includes appellant's three-year history of abusive behavior. *See Pechovnik*, 765 N.W.2d at 100 (affirming order for

protection based on totality of evidence and past abuse).

II.

The district court's order for protection also directed that appellant's parenting time with his then two-year-old daughter, K.M.H., must be supervised. The district court based this conclusion on its finding that "the abuse [of A.G.S.] occurred while the minor child K.M.H. was present in the home . . . and further that the minor child, K.M.H., witnessed the abuse." The district court found that "K.M.H. while not assaulted physically is endangered" and restricted appellant's parenting time.

Appellant contends that, even if the order for protection is valid with reference to A.G.S., the district court erred in extending it to restrict appellant's parenting time with K.M.H. Appellant points to testimony in the record regarding his able parenting of K.M.H. and to the district court's findings to show the absence of a present harm or threat to K.M.H. Appellant argues that, in the absence of any evidence of abuse of K.M.H., the elements of an order for protection are not satisfied as to K.M.H. and therefore limitations on his visitation are unwarranted. We agree.

The evidence presented at trial regarding K.M.H. failed to show any direct harm or intent on the part of appellant to cause K.M.H. fear of harm. In her testimony, the guardian ad litem noted that appellant is a good father to K.M.H. but argued that the fact of the abuse to A.G.S. could put K.M.H. "in harm's way." A.G.S. also testified that she was concerned appellant would abuse K.M.H. But there was no further evidence presented regarding a past, present, or future threat to K.M.H. Because respondent failed to show evidence of a present intention to do harm or inflict fear of harm and because the

record is void of evidence of a present harm or a threat to harm K.M.H., the district court's issuance of the order for protection restricting appellant's access to K.M.H. was an abuse of discretion.

Affirmed in part and reversed in part.