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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-273**

In the Matter of:
Teresa Corinne Kysylyczyn, petitioner,
Respondent,

vs.

John Michael Kysylyczyn,
Appellant.

**Filed October 20, 2009
Affirmed
Bjorkman, Judge**

Ramsey County District Court
File No. 62-DA-FA-08-1284

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Considered and decided by Bjorkman, Presiding Judge; Peterson, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant John Michael Kysylyczyn appeals an order for protection (OFP) issued against him in favor of respondent Teresa Corinne Kysylyczyn. Because the district court's findings are not clearly erroneous and are supported by the record, we affirm.

FACTS

The parties were married in 1999. On the night of Thanksgiving 2008, at about 11:30 p.m., respondent awoke to the sound of their three-year-old son crying in his bedroom. Respondent got out of bed to attend to her son. As she walked down the hall toward the bedroom, she noticed appellant standing in the doorway. Respondent attempted to enter the bedroom, but appellant blocked her way. Finally, the two entered the bedroom, and appellant picked up the child. The child cried out for and reached toward respondent, but appellant would not let her hold the child. Finally, appellant left the bedroom, still holding the child, followed by respondent. As the parties left the bedroom, appellant “bumped” or “pushed” respondent into the doorframe. Respondent continued asking for her son, and appellant refused to allow her to hold the child. The parties continued arguing as they entered the kitchen, where respondent slapped appellant on the back. Appellant then called the police.

By the time the police arrived, the confrontation was over. The officers took statements from both parties, and suggested that appellant sleep on the couch to avoid further incident. Neither appellant nor respondent was charged with any crime or arrested. Neither party made accusations of domestic abuse that night.

The next morning, respondent noticed large bruises on her upper left arm. She realized that the bruises were connected with her hitting the doorframe. She decided to have the police photograph the bruises in order to document them. She called the police department, and an officer suggested that they meet at her home. Respondent was afraid

to have the pictures taken at home so she arranged to meet a police officer at a public location.

Respondent obtained an ex parte OFP on December 1, 2008. On December 3, the district court conducted an evidentiary hearing. The district court took testimony from both parties, the police officers who arrived on the scene, and respondent's mother. The district court was able to observe the bruising on respondent's arm. In addition to testifying about the incident, respondent testified to a history of appellant using corporal punishment on the children and her fears for her own safety and the safety of the children. She testified that she felt as though she were "walking on eggshells" while at home, and "not knowing what's going to set him off." Respondent's mother testified that respondent called her the morning after the incident and described what had happened to her, including the injury to her arm. Respondent's mother also testified that respondent had repeatedly expressed concerns about appellant's emotionally abusive behavior. After the hearing, the district court granted respondent's OFP request.¹ This appeal follows.

DECISION

The sole issue on appeal is whether the record supports the issuance of an OFP. The decision to grant an OFP under the Minnesota Domestic Abuse Act (the act), Minn. Stat. § 518B.01 (2008), is discretionary. *Mechtel v. Mechtel*, 528 N.W.2d 916, 920 (Minn. App. 1995) (quoting Minn. Stat. § 518B.01, subd. 6(a)). A district court abuses

¹ The district court also issued an OFP in favor of appellant. Respondent has not appealed that order.

this discretion when its findings are unsupported by the record or based on a mistake of law. *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006).

[I]n our review of an OFP, 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. We will not reverse merely because we view the evidence differently. And we neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder.

Pechovnik v. Pechovnik, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotations and citations omitted).

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). Domestic abuse includes “(1) physical harm, bodily injury, or assault; [and] (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). Because the act is a remedial statute, it is construed in favor of the injured person. *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992).

Here, the district court granted the OFP based on its findings that respondent sustained physical harm and feared imminent physical harm as a result of appellant's conduct. Appellant contends, relying on *Chosa ex rel. Chosa v. Tagliente*, 693 N.W.2d 487 (Minn. App. 2005), that the evidence was insufficient to grant an OFP. We disagree. *Chosa* involved an allegation by a grandparent that her daughter was abusing her infant child. Unlike the situation here, in *Chosa* the child was too young to testify and the

physical evidence demonstrated parental neglect rather than physical abuse. This court concluded that there was no physical evidence that supported a claim of domestic abuse. *Chosa*, 693 N.W.2d at 490 (“Because respondent did not produce evidence of any physical harm nor allege any intent to do present harm, the [district] court erred in finding that domestic abuse occurred.”).

Here, the record supports the district court’s findings of both physical harm and a threat of imminent physical harm. Respondent testified that appellant forcefully moved her body into a doorframe causing her injury. Respondent submitted photographs of the resultant bruising, and the district court observed and noted the bruising on the court record. Both respondent and her mother testified to respondent’s fear of appellant on the night in question and on prior occasions. Although we note appellant’s contradictory testimony, it is not this court’s role to second-guess the district court’s credibility determinations. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004).

Appellant argues that the district court’s findings lack evidentiary support because respondent admitted, on cross-examination, that she has no memory of the events giving rise to the bruising. This assertion misstates the record and ignores respondent’s repeated testimony that appellant “pushed” or “bumped” her into the doorway during the altercation. We also reject appellant’s assertion that the lack of criminal prosecution demonstrates no domestic abuse occurred. Nothing in the act requires that there be criminal prosecution or an arrest to support an allegation of domestic abuse.

Finally, appellant argues that the district court abused its discretion in issuing the OFP because respondent’s injury was caused by an accident rather than intentional

conduct. This argument is unavailing. A finding of domestic abuse may be inferred from the totality of the circumstances. *Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989). It is undisputed that the parties were engaged in a heated argument at the time respondent was injured and that appellant's use of his body caused respondent to come into contact with the doorframe. The district court inferred that respondent's injury was linked to the altercation and implicitly rejected appellant's argument that the harm was accidental. Based on the totality of the circumstances, these conclusions are reasonable.

Reviewing the record in the light most favorable to the district court's findings, we conclude that ample evidence, including the testimony of respondent and her mother, and the bruising on respondent's arm that was visible at the time of the hearing, supports the district court's order.

Affirmed.