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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-117**

In the Matter of:
Lisa Ann Shaw, f/k/a Lisa Ann Sikora, petitioner,
Respondent,

vs.

Anthony Conrad Sikora,
Appellant.

**Filed November 2, 2010
Affirmed in part and remanded
Bjorkman, Judge**

St. Louis County District Court
File No. 69-F1-04-102042

William E. Maxwell, Legal Aid Service of Northeast Minnesota, Virginia, Minnesota (for respondent)

Dori P. Smith, Indian Legal Assistance Program, Duluth, Minnesota (for appellant)

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

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

BJORKMAN, Judge

Appellant challenges the district court's extension of an order for protection (OFP) against him, arguing that (1) the district court abused its discretion by granting the extension, (2) the district court abused its discretion by extending the OFP for 50 years

from the original OFP, and (3) Minn. Stat. § 518B.01, subd. 6a(b) (2008), which authorizes an OFP extension of up to 50 years, is unconstitutionally vague and overbroad. Because the district court did not abuse its discretion by granting the OFP extension, we affirm in part. But because the district court's findings are insufficient for us to review its decision to impose a 50-year extension, we remand for additional findings as to duration. We decline to reach appellant's constitutional argument raised for the first time on appeal.

FACTS

Appellant Anthony Sikora and respondent Lisa Shaw were married in 1988 and have two children who are currently 17 and 15 years old. Sikora and Shaw divorced in 2005.

In October 2004, while the dissolution was pending, Shaw requested an ex parte OFP against Sikora, alleging that Sikora made harassing phone calls to her, disparaged her to their children, and had threatened to kill her. The district court granted the OFP, directing Sikora not to have any contact with Shaw, in person or by telephone, "except as previously ordered" for custody reasons, and not to enter Shaw's residence or place of employment. Despite the OFP, Sikora contacted Shaw via telephone in February 2005; he was charged with and pleaded guilty to misdemeanor violation of an OFP, Minn. Stat. § 518B.01, subd. 14(b) (2004). He violated the OFP again in March 2005 by engaging in a telephone conversation that went beyond the topics of childcare and parenting time. Sikora pleaded guilty to gross misdemeanor violation of an OFP, Minn. Stat. § 518B.01,

subd. 14(c) (2004). The district court subsequently amended the OFP to preclude all contact with Shaw.

In October 2005, the district court granted Shaw's request to extend the OFP for two more years. Sikora again violated the OFP in October 2006 by entering Shaw's place of employment while she was there. He pleaded guilty to a felony-level offense and was placed on probation for two years.

Shaw requested a further extension of the OFP in October 2007, which the district court granted for a one-year term. And in October 2008, Shaw requested another extension of the OFP. Sikora retained counsel, and, after a series of continuances, the district court conducted a three-day hearing during the summer of 2009. The district court took judicial notice of the parties' dissolution proceedings, and Sikora stipulated to his prior OFP violations. Shaw clarified that she was seeking the maximum 50-year extension under Minn. Stat. § 518B.01, subd. 6a(b). Based on the previous OFP violations and Shaw's testimony regarding Sikora's ongoing conduct and her fear of him, the district court granted Shaw's request and extended the OFP to October 2054. This appeal follows.

D E C I S I O N

I. The district court did not abuse its discretion by extending the OFP.

The decision to grant or extend an OFP under the Minnesota Domestic Abuse Act, Minn. Stat. § 518B.01 (2008), is discretionary. *McIntosh v. McIntosh*, 740 N.W.2d 1, 9 (Minn. App. 2007). A district court abuses 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). We review the record in the light most favorable to the district court’s findings and will reverse those findings only if “left with the definite and firm conviction that a mistake has been made.” *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) (quotation omitted). We review questions of statutory interpretation de novo. *Braend*, 721 N.W.2d at 927.

A district court may extend the term of an existing OFP upon a showing that

- (1) the respondent has violated a prior or existing order for protection;
- (2) the petitioner is reasonably in fear of physical harm from the respondent;
- (3) the respondent has engaged in acts of harassment or stalking within the meaning of section 609.749, subdivision 2; or
- (4) the respondent is incarcerated and about to be released, or has recently been released from incarceration.

Minn. Stat. § 518B.01, subd. 6a(a). The petitioner need only show one of these four alternatives, *Braend*, 721 N.W.2d at 927, and is not required to demonstrate that physical harm is imminent, Minn. Stat. § 518B.01, subd. 6a(a).

The district court determined that extension of the OFP was warranted based on findings that (1) Sikora had violated the OFP, (2) Shaw is reasonably in fear of physical harm from Sikora, and (3) Sikora exhibited a pattern of behavior that included both repeated OFP violations and acts that, while technically not violating the OFP, were intended to cause Shaw fear. Sikora challenges this determination on numerous grounds.

Sikora first argues that his previous violations do not warrant extending the OFP. But the domestic-abuse act expressly provides that violation of an existing or prior OFP is a sufficient basis for extending an OFP. Minn. Stat. § 518B.01, subd. 6a(a)(1). Sikora

asserts that our decision in *McIntosh* “clarified” that prior OFP violations alone are not sufficient to extend an OFP. We disagree. In *McIntosh*, the petitioner sought extension of an OFP based on allegations that the respondent had previously violated the OFP and that the petitioner reasonably feared physical harm from the respondent. 740 N.W.2d at 5. The district court extended the OFP based solely on its finding that the petitioner was reasonably in fear of physical harm. *Id.* We affirmed on that basis. *Id.* at 11. Although we noted that the district court did not rely on the alleged prior OFP violations in extending the OFP, we did not hold that prior OFP violations may not form an independent basis for an OFP extension. *Id.* Sikora’s admitted violations are a sufficient basis for extending the OFP pursuant to the plain language of Minn. Stat. § 518B.01, subd. 6a(a)(1).

Sikora next asserts that his prior OFP violations cannot support the extension because they are remote in time. But the domestic-abuse act contains no temporal restrictions. To the contrary, the act permits extension of an OFP if the petitioner shows that “the respondent has violated a prior or existing order for protection.” Minn. Stat. § 518B.01, subd. 6a(a)(1). The fact that an extension may be based on violation of a prior OFP suggests that the violation need not be recent. This interpretation is consistent with the ten-year look-back provision in the subdivision criminalizing OFP violations. *See* Minn. Stat. § 518B.01, subd. 14(c), (d) (aggravating OFP violations based on OFP violations within past ten years). Moreover, the record here, which demonstrates that 19 months passed between Sikora’s second and third OFP violations, belies Sikora’s argument that the length of time since his last violation renders the violation irrelevant.

Sikora also challenges the district court's failure to make specific findings supporting its determination that Shaw reasonably fears physical harm from Sikora and argues that the record does not support that determination. These arguments are unavailing. The district court found that Shaw reasonably feared physical harm from Sikora because he repeatedly and unnecessarily drove past her apartment, repeatedly parked his vehicle in a nearby parking lot in order to stare at her and her apartment, and went to her place of employment. The record supports these findings. Shaw testified that in the year or so leading up to the summer 2009 hearing Sikora had consistently visited the grocery store near her apartment three or four times per week and, rather than purchasing groceries and leaving, would park as close to her apartment as possible and stare at her or her apartment with an "angry look." He did this even at times when the store was closed. And he often left by taking the route closest to her apartment. She believed, based on their history, that he wanted to intimidate her and let her know that he was watching her and monitoring her activities.

The record also contains substantial evidence that Shaw reasonably feared physical harm from Sikora. Shaw testified that she was concerned that Sikora would start harassing her "physically or verbally" if the OFP were not extended. She also testified that Sikora had been physically and verbally abusive to her for their whole relationship, including grabbing, shaking, or pushing her when he was angry. She explained that she had not previously reported incidents of violence or detailed them in previous OFP proceedings because she had been embarrassed by many of the incidents, including Sikora's statement, after learning that she wanted a divorce, that he would "cut off [her]

head and put it in the freezer so that he would remember what [she] looked like.” Overall, this record amply supports the district court’s determination that Shaw reasonably feared physical harm from Sikora.

II. The district court’s findings are insufficient to permit review of its decision to extend the OFP for 50 years.

Sikora also argues that the district court abused its discretion by extending the OFP for 50 years from the date of the original OFP. A district court may extend an OFP “for a period of up to 50 years” if it finds that (1) the respondent has violated a prior or existing order for protection on two or more occasions or (2) the petitioner has had two or more orders for protection in effect against the same respondent Minn. Stat. § 518B.01, subd. 6a(b). We will not reverse the district court’s decision regarding the duration of an OFP extension absent an abuse of the court’s broad discretion. *See Braend*, 721 N.W.2d at 928 (reviewing OFP length for abuse of discretion). But we can effectively review a district court’s exercise of discretion only if the court explains the factors it considered in exercising that discretion. *See Hagen v. Schirmers*, 783 N.W.2d 212, 217 (Minn. App. 2010) (recognizing district court’s broad discretion in family matters and stating that effective appellate review is not possible unless the district court explains both its decision and its underlying reasons).

The district court decided that extension of the OFP to October 2054 was warranted based on both statutory grounds. The district court found that Sikora violated the OFP three times and that Shaw had obtained multiple extensions of the OFP; Sikora does not dispute that the evidence supports both grounds. But these findings merely

establish the minimum requirements for invoking subdivision 6a(b). The district court did not make factual findings or otherwise explain the basis for its conclusion that the maximum 50-year extension is warranted. Nor did the district court discuss how Shaw's need for protection weighs against Sikora's claim that a 50-year OFP will significantly adversely affect him for the rest of his life because they live in a small community. Although this court can speculate about the potential bases for the 50-year extension, including the nature and number of Sikora's OFP violations and the duration of his conduct, on this record we are unable to determine which, if any, of these factors the district court considered in determining duration. Without findings explaining why a 50-year extension was more appropriate than a 25-year or 2-year extension, we cannot determine whether the district court abused its discretion. Accordingly, we remand for additional findings as to the duration of the extended OFP.

Finally, Sikora argues for the first time on appeal that Minn. Stat. § 518B.01, subd. 6a(b), is unconstitutionally vague and overbroad. We generally will not rule on the constitutionality of statutes when the issue was not considered or decided by the district court. *City of Chanhassen v. Carver Cnty.*, 369 N.W.2d 297, 300 (Minn. App. 1985). We may consider constitutional issues raised for the first time on appeal “when the interests of justice require consideration of such issues, when the parties have had adequate time to brief such issues, and when such issues are implied in the [district] court.” *Tischendorf v. Tischendorf*, 321 N.W.2d 405, 410 (Minn. 1982). None of these factors warrants our consideration of Sikora's constitutional arguments.

Sikora had ample opportunity between October 2008 and August 2009 to present his constitutional arguments to the district court and did not do so. Sikora did argue, as he does on appeal, that “it appears that if a Respondent has ever violated an order for protection a Petitioner could potentially request an extension and have it granted indefinitely whether it’s been a year, one year, two years, twenty years since the violation.” But Sikora made this assertion in the context of his argument that *McIntosh* means an OFP violation is not, in and of itself, enough to warrant extension of the OFP. Such an argument does not imply a constitutional challenge. Finally, although the parties have briefed the constitutional issue on appeal, the absence of any discussion of this issue before the district court left the parties with little to discuss other than generalized constitutional principles. We conclude that this record does not warrant our consideration of Sikora’s constitutional challenges for the first time on appeal.

Affirmed in part and remanded.