

STATE OF MINNESOTA
IN COURT OF APPEALS

A23-1083



In the Matter of Ashley Marie Donahue,
petitioner,

Respondent,

ORDER OPINION

vs.

Meeker County District Court
File No. 47-FA-23-460

Mitchell B Donahue,

Appellant.

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Klaphake, Judge.*

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. Ashley Marie Donahue petitioned the district court for an order for protection (OFP) against her estranged husband, Mitchell Bryce Donahue. The district court granted the petition and issued an OFP that forbids Mitchell from having contact with Ashley for two years. We affirm.

2. Ashley alleged in her OFP petition that she and Mitchell began living together in 2011, that they were married in 2018, that they have two joint minor children,

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

that they separated in February 2023, and that a petition for dissolution of the marriage has been filed.

3. Ashley petitioned for an OFP in June 2023. The district court denied her request for a temporary *ex parte* OFP. At Ashley's request, the district court conducted an evidentiary hearing. Three witnesses testified: Ashley, Mitchell, and C.R., who is a friend of Ashley. Two days after the hearing, the district court filed an order in which it granted Ashley's petition and issued an OFP that prohibits Mitchell from contacting Ashley, with certain exceptions, for a period of two years. Mitchell appeals.

4. The Minnesota Domestic Abuse Act authorizes a district court to issue an OFP to protect a victim of domestic abuse. *See generally* Minn. Stat. § 518B.01 (2022 & Supp. 2023). This court applies an abuse-of-discretion standard of review to a district court's issuance of an OFP. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). In conducting that review, 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." *Id.* at 99 (quotation omitted).

5. Mitchell makes two arguments for reversal. First, he argues that the district court erred on the ground that its findings of fact do not describe conduct that satisfies the statutory definition of domestic abuse.

6. The district court found that domestic abuse occurred and made specific findings about the conduct by Mitchell that constitutes domestic abuse. The district court found that Mitchell threw a champagne bottle toward Ashley while angrily yelling, using profanity, and calling Ashley derogatory names. The district court also found that Mitchell

angrily called Ashley names on several other occasions in the presence of the parties' children. In addition, the district court found that Mitchell punched holes in walls and doors in the parties' home. The district court found that such incidents had occurred on many occasions, with increasing frequency, during the prior two-year period.

7. In an OFP case, the petitioner has the burden of proving by a preponderance of the evidence that the respondent engaged in domestic abuse against a family or household member. Minn. Stat. § 518B.01, subd. 2(a) (2022); *Oberg v. Bradley*, 868 N.W.2d 62, 64 (Minn. App. 2015). The term “domestic abuse” is defined by statute to mean “(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 . . . ; sexual extortion . . . ; or interference with an emergency call.” Minn. Stat. § 518B.01, subd. 2(a).

8. The district court did not expressly state which type of domestic abuse was engaged in by Mitchell. We assume that the district court's finding of domestic abuse is not premised on the first clause of the statutory definition of domestic abuse because Ashley testified that Mitchell did not hit her. We believe that the district court's finding of domestic abuse is premised on the second clause because the district court's findings describe conduct that is likely to inflict “fear of imminent physical harm, bodily injury, or assault.” In addition, the district court's findings are supported by evidence of the fearful effect of Mitchell's conduct. Ashley testified about the sudden and alarming consequences of Mitchell's throwing of a full champagne bottle, which caused her to immediately leave the house. Ashley also testified that, on other occasions, Mitchell followed her throughout

the house in an intimidating manner that was designed to force her to leave the house. She further testified that, during several arguments, Mitchell followed her around the house and forcefully broke doors and made holes in walls with his fists. In cross-examining Mitchell about those incidents, Ashley described the incidents as acts of “violence.” The relevant question is whether the district court’s findings of fact “sustain the conclusions of law and the judgment.” *See Gruenhagen v. Larson*, 246 N.W.2d 565, 569 (Minn. 1976). We conclude that the findings of fact provide sufficient support for the conclusion that domestic abuse occurred. Stated differently, we are not left with the “definite and firm conviction that a mistake has been made.” *Pechovnik*, 765 N.W.2d at 99 (quotation omitted). Thus, the district court did not abuse its discretion by determining that Mitchell engaged in domestic abuse.

9. Second, Mitchell argues that the district court erred by relying on the testimony of C.R., who testified about the incident involving the champagne bottle despite not being physically present for that incident. Mitchell acknowledges that an appellate court may not reweigh the evidence. *See In re Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021). In addition, the credibility of a witness and the reliability of a witness’s testimony are “exclusively the province of the factfinder.” *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Furthermore, the supreme court’s caselaw demonstrates that a person who has heard but not seen domestic abuse is competent to give testimony about what the person heard. *See State v. Clark*, 739 N.W.2d 412, 420 (Minn. 2007); *State v. Robinson*, 539 N.W.2d 231, 234 (Minn. 1995).

10. C.R. testified about her perceptions of the bottle-throwing incident, which occurred while she was on a telephone call with Ashley, who had her cell phone in her pocket, which allowed C.R. to hear Mitchell's statements. C.R. testified that she recognized Mitchell's voice and could hear what he was saying. C.R. had personal knowledge of the bottle-throwing incident because she heard the incident, even though she did not see it. C.R. also testified about her familiarity with Ashley and Mitchell and other incidents of conflict between them, including incidents that made Ashley fearful of Mitchell, which provided context for C.R.'s testimony about the bottle-throwing incident. The district court relied on C.R.'s testimony concerning the bottle-throwing incident primarily as corroboration of Ashley's testimony about the incident. The district court did not abuse its discretion by relying, in part, on C.R.'s testimony in making its findings of fact.

IT IS HEREBY ORDERED:

1. The district court's order is affirmed.
2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, *res judicata*, or collateral estoppel.

Dated: April 5, 2024

BY THE COURT



Judge Matthew E. Johnson