This opinion is nonprecedential except as provided by Minn. R. Civ. App. P. 136.01, subd. 1(c).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0518**

In the Matter of Summer Rae Cada on Behalf of Minor Children, petitioner,
Appellant,

vs.

Brian Gerald Cada,
Respondent.

**Filed January 13, 2025
Affirmed
Smith, John, Judge***

Winona County District Court
File No. 85-FA-23-1622

Thomas R. Braun, Bruce K. Piotrowski, Restovich Braun & Associates, Rochester, Minnesota (for appellant)

Kurt J. Knuesel, Knuesel Law Firm, Winona, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Wheelock, Judge; and Smith, John, Judge.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm because the district court did not misapply the law or abuse its discretion by finding an order for protection (OFP) was not warranted under the circumstances.

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

Appellant challenges the district court's denial of her petition for an OFP, arguing that the district court (1) misapplied the law in identifying what constitutes domestic abuse, and (2) should have ruled that appellant showed the existence of domestic abuse.

FACTS

Appellant-mother Summer Rae Cada and respondent-father Brian Gerald Cada have been married since 1999. The parties have 11 children together. Mother filed for dissolution of the marriage in September 2022. One year later, mother filed for an OFP on behalf of the 8 minor children. The minor children subject to the OFP petition are:

1. W.C., born in 2006 (now 18)
2. R.C., born in 2010
3. G.C., born in 2011
4. J.C., born in 2013
5. P.C., born in 2015
6. P.C., born in 2016
7. E.C., born in 2018
8. H.C., born in 2020

The parties' three adult children are T.C., C.C., and M.C.

Mother's petition alleged that the children, who were minors when she filed her petition, were fearful of father. She made specific allegations as to two children: E.C. and H.C. Mother alleged that she observed a "fingerprint bruise on [E.C.'s] neck" after a visit with father, "handprint bruising" on her thighs, bruising on her face, and that E.C. said that "she does not like sleeping with daddy because he has touched her bottom and private parts

to the point that she feels like he is 'making her bleed.'" As to H.C., mother alleged that she observed "severe bruising on [H.C.'s] bottom and anus." She opined that the bruising resulted from father spanking the child.

On September 20, 2023, the district court granted an ex parte OFP that protected the minor children from father. The district court also suspended father's parenting time, appointed a guardian ad litem (GAL), and set a hearing for the matter. Mother and father agreed to set an evidentiary hearing for the matter.

The district court held evidentiary hearings over seven days that concluded on January 16, 2024. It received testimony from ten witnesses: mother, father, the child-protection services worker (CPS), the GAL, a former friend of mother's, and five of the parties' children (two of whom were minors). It received 16 exhibits from the parties.

During the evidentiary hearings, mother testified that father "struck" each minor child on the arms and buttocks when he disciplined them or when a child was in his way, and that this occurred for years. Mother testified that father used a two-foot-long wooden backscratcher to strike the children. She said that father would indiscriminately strike the children and called these strikes "love taps." She stated there were occasions when the children would be bruised after being struck. She opined that he struck at least two of the minor children, W.C. and J.C., approximately 50 times each during the parties' marriage. She stated she was not always present when the spanking occurred, because father would take the children into another room, and she was not allowed to be in the room.

She further testified that she has also used corporal punishment on the children. She would spank the children using a wooden spoon or a thin, two-foot-long plastic rod. She

believed that she had used corporal punishment "less than ten times" on the children. Mother and father each testified that the parties' church condoned the use of corporal punishment with an object, and they had agreed to use corporal punishment.

After the parties separated, mother testified she observed bruising on the minor children, E.C. and H.C., on two occasions after the children returned from father's parenting time. In June 2023, she found bruises on E.C.'s neck after the child returned from father's care. In August 2023, she noticed H.C. was bruised on his "bottom and anus."

On September 1, 2023, she took E.C. and H.C. to a pediatrician. The pediatrician "found abnormal bruising [on E.C. and H.C.] that was consistent with . . . non-accidental trauma or physical child abuse." The pediatrician reported her findings to CPS.

Following the pediatrician's report, CPS began to investigate the allegations, focusing on the discipline used on the two youngest children. The CPS worker evaluated the children and observed a "dime size . . . brownish yellow colored bruise" on H.C.'s bottom and a similar mark on his upper back thigh. She observed "some very faint linear markings" on E.C.'s face. When the CPS worker was asked if she had concerns about mother's use of corporal punishment, she testified that "Based on the information that was shared with me, there was no information to suggest that there were concerns there."

CPS requested father, and father initially agreed, to forgo his scheduled parenting time on September 1. CPS requested father sign a case plan; he initially refused to do so but later signed it after consulting with an attorney. CPS made a maltreatment determination against father for physical abuse in regard to the child H.C., but not for the child E.C. The maltreatment determination was made based on the bruising on H.C.'s

buttocks that appeared consistent with H.C. being spanked by a "utensil" or hand and statements made by the other children indicating father spanked the child. H.C. had other bruises, but the CPS worker opined that those bruises could be "saddle injuries" that occur when a child falls, for example, "off of a seat of a bike on to something." She also concluded "the information that was provided was not sufficient to specifically identify an allegation of sexual abuse" relating to the child E.C.

Father testified that he did use the backscratcher to administer spankings as discipline. He testified that he had done so with every child, except for H.C. and E.C. He believed it had been three years since he last used the backscratcher and he had used it "twelve to fifteen times" in 24 years. He considered the use of the backscratcher to be "reasonable discipline." During direct-examination, father testified to how hard he would strike with the backscratcher:

> A: I mean, I felt like it was firm. I don't feel like it was excessive. I felt like it was firm where it would sting. That it would sting. That they would remember that, and they would say, I'm going to lie here oh wait, I remember dad spanking me and they would think about that, and they would say okay I know right from wrong. I don't want that again so. But that's firm.
>
> Q. Did you—was it your intent to ever strike one of these children with such force and velocity that it would leave a mark?
> A. No.

He testified that he would use the backscratcher for "love taps" on the children:

> But I remember years ago, bedtime at bedtime sessions, where a kid would be, maybe I would have to get ready for bed and get kids to come up the stairs and hey, let's get to bed and I would tap. And that's why they were called love taps, not love

> strikes, not love hits. They were love taps. Where I would tap the kid on the butt and say, hey bud, let's go. And tap him on the butt. That's my recollection of love taps.

He stated he did not check to see if the children were bruised or harmed from his use of the backscratcher.

Father also testified in regard to the specific allegations involving H.C. and E.C. Father said that in early August 2023, he spanked H.C. once by hand after H.C. jumped off a bunk bed after being told to stop. The weekend prior to Labor Day weekend, father had parenting time with the children. He denied spanking any of the children with the backscratcher that weekend, "tak[ing] a child into a room alone," or "administer[ing] indiscriminate love taps with the back scratcher." Father further denied sexually assaulting E.C. or any of his other daughters. When asked generally about the way he disciplined the children during parenting time, he said, "I didn't even discipline them . . . maybe I'd have stern talkings. . . . But I just really didn't do any spanking. Maybe a time out but I just didn't want that to be part of the parenting time."

All five of the children who testified stated that father and mother spanked them growing up. T.C. and C.C., two of the adult children, testified the parent administering discipline would spank a child once or twice. However, they had not seen father spank a child since the parents' separation and were present at father's parenting time the weekend prior to Labor Day. On the other hand, W.C. testified that he did not remember if father spanked H.C. that weekend. W.C. also testified that when he was at father's home after the separation his day consisted of a sleeping, riding bike, and being hit. G.C. testified that

she saw father spank H.C. once in August 2023, "because he spilled a glass of milk" and was told by another sibling that H.C. was spanked after breaking a puzzle.

The district court filed its order denying the order for protection on February 14, 2024. It found that mother "has not proven domestic abuse by a preponderance of the evidence," because there was "no reliable evidence of injury from corporal punishment." It further found that "the best interests of the children . . . are to be determined in the custody proceeding, not this OFP file."

DECISION

I. The district court did not misapply the law when it denied mother's OFP on behalf of the minor children.

We review the decision whether to grant an OFP for abuse of discretion. *Thompson ex rel. Minor Child v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). A district court abuses its discretion "when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Id.* (quotation omitted). We review questions of law, such as statutory interpretation, de novo. *Id.* at 498.

To obtain an OFP, a petitioner must prove by a preponderance of the evidence, *Oberg v. Bradley*, 868 N.W.2d 62, 64-65 (Minn. App. 2015), that the respondent has committed "domestic abuse." Minn. Stat. § 518B.01, subds. 2(a), 4(b) (2022). Domestic abuse includes any of the following committed against a family or household member: (1) "physical harm, bodily injury, or assault"; (2) "infliction of fear of imminent physical harm, bodily injury, or assault"; or (3) various enumerated crimes, including criminal sexual conduct. *Id.*, subd. 2(a).

Mother argues the district court abused its discretion by determining "that the conduct at issue did not meet the definition of domestic abuse because it was 'reasonable corporal punishment.'" She contends that the district court improperly considered criminal statutes when construing the meaning of domestic abuse under Minn. Stat. § 518B.01.

If a statute is unambiguous, we interpret the statutory language according to its plain and ordinary meaning. *Rew v. Bergstrom*, 845 N.W.2d 764, 775 (Minn. 2014). "The Domestic Abuse Act, as a remedial statute, receives liberal construction but it may not be expanded in a way that does not advance its remedial purpose." *Sperle v. Orth*, 763 N.W.2d 670, 673 (Minn. App. 2009) (quotation omitted).

In its findings the district court stated that "[j]udiciously administered corporal punishment does not constitute domestic abuse[,]" that "Minn. Stat. § 609.06, subd. 1(6) specifically authorizes parental use of reasonable force to restrain or correct a child's behavior" and that "the punishment was not malicious within the meaning of Minn. Stat. § 609.377." The definition of "domestic abuse" in the Minnesota Domestic Abuse Act (the act) does not refer to the criminal statutes cited by the district court—Minn. Stat. §§ 609.06, subd. 1(6) (2022) (reasonable force may be used by a parent "in the exercise of lawful authority, to restrain or correct [a] child"), .377 (malicious punishment of a child), .379 (reasonable force may be used by a parent to "restrain or correct the child"). *See* Minn. Stat. § 518B.01, subd. 2(a). Instead, the legislature expressly indicated in the act that a district court may grant an OFP when it finds domestic abuse occurred on the basis of at least one of the three domestic-abuse definitions. *See Thompson*, 906 N.W.2d at 499-500 (concluding that because the bodily harm definition of domestic assault includes no

temporal component, it does not require recent harm). We do not interpret the definitions beyond what is expressly indicated in the act, *id.*, but precluding the district court from considering the criminal statutes when determining if "domestic abuse" occurred would be "contrary to the liberal construction that is to be given to remedial legislation" like the act here, *In re Welfare of Child of N.F.*, 749 N.W.2d 802, 808 (Minn. 2008). Further, the actions constituting "malicious punishment of a child" may also be the basis for a petition for an OFP. *Compare* Minn. Stat. § 609.377, *with* § 518B.01, subds. 2(a), 4(b); *see also N.F.*, 749 N.W.2d at 808 (noting that "child abuse" as defined in the Minnesota Juvenile Court Act includes crimes found in Minnesota law).

Moreover, although the district court considered criminal statutes, it ultimately concluded that "[t]here is no reliable evidence of injury from corporal punishment" and "the alleged domestic abuse does not fit within the definition of domestic abuse under Minn. Stat. § 518B.01." In other words, the district court appeared to consider the correct definition of "domestic abuse" and found the allegations did not rise to the level of domestic abuse and that there was no evidence of injury. And even if the district court did commit error by considering criminal statutes, then mother must still show she was prejudiced by the district court's error to obtain relief on appeal. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored). Mother cannot establish prejudice, because the district court ultimately applied Minn. Stat. § 518B.01 in its decision.[1]

[1] The district court also held, "[T]here is simply not enough evidence to convince this [c]ourt that sexual abuse at the hands of [father] occurred." Mother does not challenge the district court's order in this respect.

II. The district court did not abuse its discretion in denying mother's petition for an OFP on behalf of the minor children.

Mother next contends that "the record . . . overwhelming[ly] demonstrates both physical harm, bodily injury, or assault and of the infliction of fear of imminent physical harm, bodily injury, or assault."

As noted above, we review the district court's decision whether to grant an OFP for an abuse of discretion. *Thompson*, 906 N.W.2d at 500. And we apply a deferential clear-error standard of review to the district court's factual findings. *Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). When reviewing factual findings for clear error, appellate courts (1) view the evidence in the light most favorable to the findings, (2) do not find their own facts, (3) do not reweigh the evidence, and (4) do not reconcile conflicting evidence. *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221-22 (Minn. 2021); *see Ewald v. Nedrebo*, 999 N.W.2d 546, 552 (Minn. App. 2023) (citing *Kenney* in a family-law appeal), *rev. denied* (Minn. Feb. 28, 2024). And we do not "decide issues of witness credibility." *Aljubailah v. James*, 903 N.W.2d 638, 643 (Minn. App. 2017) (quotation omitted). Thus,

> an appellate court need not go into an extended discussion of the evidence to prove or demonstrate the correctness of the findings of the [district] court. Rather, because the fact[-]finder has the primary responsibility of determining the fact issues and the advantage of observing the witnesses in view of all the circumstances surrounding the entire proceeding, an appellate court's duty is fully performed after it has fairly considered all the evidence and has determined that the evidence reasonably supports the decision.

Kenney, 963 N.W.2d at 222 (quotations and citation omitted); *see Vangsness v. Vangsness*, 607 N.W.2d 468, 472, 474 (Minn. App. 2000) (discussing clear error standard of review).

Mother argues the district court ignored the testimony of M.C., W.C., and G.C. in making its decision. Those children testified that both parents used corporal punishment on the children. The district court specifically found mother and W.C.'s testimony not credible but found father and T.C.'s testimony credible when it considered whether domestic abuse occurred. We defer to the district court's credibility determinations. *See Aljubailah*, 903 N.W.2d at 643.

Mother next contends that the district court's finding that no domestic abuse occurred is unsupported by the record, because it contains five photos of H.C. and E.C.'s injuries. The district court did not make findings in regard to the photos mother submitted of H.C. and E.C. But it ultimately concluded that mother "has not proven domestic abuse by a preponderance of the evidence and no [o]rder for [p]rotection is warranted." When a petitioner files an OFP petition, she must "allege the existence of domestic abuse" and state the "specific facts and circumstances from which relief is sought." Minn. Stat. § 518B.01, subd. 4(b). And "[n]o relief is available . . . unless a petitioner first shows that 'domestic abuse' has occurred." *Thompson*, 906 N.W.2d at 498-99. The alleged abuse of H.C. and E.C. was the most specific incident of abuse that mother identified, and the district court ultimately found mother's testimony at the hearings not credible to satisfy her burden to obtain an OFP.

This court has previously upheld a district court's findings of domestic abuse for allegations of a child being spanked. *See Aljubailah*, 903 N.W.2d at 642-43 (affirming

finding of domestic abuse and issuance of an OFP when a father admitted striking his son with a belt and photographs showed bruising); *Oberg*, 868 N.W.2d at 63, 66 (affirming OFP based on testimony of the parties, a social worker, and a psychologist that father spanked the minor child twice). But unlike those cases where the district court either received visual evidence or specific testimony of the incidents, here the district court heard conflicting testimony and received five photos into evidence that did not convince the district court that father inflicted injury on the children. Upon our review for clear error in the district court's findings, we will not reconcile conflicting evidence. *See Kenney*, 963 N.W.2d at 222; *Vangsness*, 607 N.W.2d at 472, 474.

Accordingly, under the deferential standard used to review a district court's decision to grant or deny an OFP, we conclude that the district court did not abuse its discretion in denying the OFP.

Affirmed.