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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1555**

In the Matter of:
A.D.U., petitioner,
Respondent,

vs.
Dane Martin Kallevig,
Appellant.

**Filed June 15, 2010
Affirmed
Collins, Judge***

Kandiyohi County District Court
File No. 34-FA-09-211

Rana S. Alexander Fuller, Minneapolis, Minnesota (for respondent)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Connolly, Judge; and Collins, Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Dane Kallevig challenges the order for protection (OFP) for a violation of the Domestic Abuse Act, Minn. Stat. § 518B.01 (2008), (Act) granted to respondent A.U., a woman with whom Kallevig had a five-year romantic relationship. Because the

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

evidence adduced during the evidentiary hearing supports the district court's findings that Kallevig's intentional conduct placed A.U. in fear of imminent physical harm and he was a "family or household member" of A.U.'s within the meaning of the Act, we affirm.

D E C I S I O N

"The decision to grant an OFP under the [Act] is within the district court's discretion." *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009) (quotation omitted). An abuse of discretion is demonstrated by a misapplication of the law or by factual findings that are unsupported in the record. *Id.* Because it is a remedial statute, the Act is to be construed in favor of the harmed person. *Id.*

Kallevig's brief to this court relies on his account of the facts that discounts the credibility determinations and factual findings made by the district court. But this court must view "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 ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 927 (Minn. App. 2006) (quotation omitted). Credibility determinations are for the district court as fact finder. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004). Thus, in reaching our decision, we are compelled to analyze the facts by giving due deference to the district court's credibility determinations and findings.

Kallevig essentially asserts he was not subject to the Act for two reasons: (1) he did not commit domestic abuse because he did not intentionally inflict upon A.U. the fear of imminent physical harm; and (2) he was not a "family or household member" within the meaning of the Act because he and A.U. never lived together or had children together.

Fear of Imminent Physical Harm

The Act defines “domestic abuse” as either direct physical harm or other types of harm, including “the infliction of fear of imminent physical harm, bodily injury, or assault.” Minn. Stat. § 518B.01, subd. 2(a)(2). Intent to commit domestic abuse “can be inferred from the totality of the circumstances.” *Pechovnik*, 765 N.W.2d at 99.

Based on the totality of the circumstances, we determine that the evidence elicited at the evidentiary hearing supported the district court’s conclusion that Kallevig’s conduct intentionally placed A.U. in fear of imminent physical harm. In addition to his repeated attempts to contact A.U. by phone calls or text messages and to attract A.U.’s attentions by following her in his vehicle as she went about her daily activities, Kallevig initiated three more serious events. In the first, he intentionally rammed his truck into A.U.’s unattended car so hard that it moved a cement median against which the car was parked, damaging the car. In the second, he followed A.U.’s car so closely in his truck that she was fearful of being rear-ended if she applied her brakes, and after arriving at her home, he shook and pounded on the car while A.U. was inside and did not leave her property until ordered to do so by A.U.’s brother. And in the third, while A.U. sat parked in her car in her driveway late at night, Kallevig drove near A.U.’s home causing his headlights to shine on her driveway, car, and into her living room. According to the testimony of A.U. and her mother, Kallevig’s conduct placed A.U. in actual fear of imminent physical harm.

While Kallevig correctly notes that his contact with A.U. generally diminished over time, A.U. petitioned for the OFP soon after Kallevig resumed his behavior of

stalking A.U., thus meeting the element of intent to do her “present harm.” *See Chosa v. Tagliente*, 693 N.W.2d 487, 489 (Minn. App. 2005) (requiring that person committing domestic abuse intend “to do present harm”). Although not as egregious as in some cases, we nonetheless hold that Kallevig’s conduct was sufficient to support the district court’s conclusion of “domestic assault” as defined in the Act. *See Pechovnik*, 765 N.W.2d at 99 (affirming issuance of OFP based on conduct that included “gestures, persistent questioning, aggressive conversation and controlling behavior,” as well as prior history of threatening behavior).

Family or Household Members

The Act prohibits domestic abuse by “family or household members,” which includes, among other types of relationships, “persons involved in a significant romantic or sexual relationship.” Minn. Stat. § 518B.01, subd. 2(b)(7).

In determining whether persons are or have been involved in a significant romantic or sexual relationship under clause (7), the court shall consider the length of time of the relationship; type of relationship; frequency of interaction between the parties; and, if the relationship has terminated, length of time since the termination.

Id. at subd. 2(7).

In *Sperle v. Orth*, 763 N.W.2d 670 (Minn. App. 2009), this court considered whether a former romantic relationship could constitute a “significant romantic or sexual relationship” within the meaning of the statute, and concluded that it could. *Id.* at 674. We analyzed the language of the statute and applied the plain-language principle to conclude that former romantic relationships are included within the phrase “significant

romantic or sexual relationship” as long as they find support in the four statutory factors listed for establishing such a relationship. *Id.*

Here, the district court concluded that a “significant romantic or sexual relationship” existed between the parties, and the totality of the circumstances shown in the record supports this finding. In their testimony, the parties agreed that their time together extending over five years was an “intimate” “dating” relationship. While there is no specific finding on the “frequency of interaction between the parties,” the district court reasonably could infer that this factor was satisfied, based on the strength of the other factors, to support its conclusion that the parties had a significant romantic relationship within the meaning of Minn. Stat. § 518B, subd. 2(b).

Finally, Kallevig argues that the facts of this case are not egregious enough to warrant adjudication and the attendant consequences for domestic abuse and would have been more appropriately alleged to obtain an harassment restraining order under Minn. Stat. § 609.748 (2008). But because of the parties’ intimate relationship, Kallevig’s conduct was subject to the Act, which regulates conduct involving domestic

relationships. Thus, the district court did not abuse its discretion by granting the OFP under the Act.¹

Affirmed.

¹ While he does not raise a constitutional claim, Kallevig's brief to this court includes references to constitutional violations and veiled challenges to the validity of the Act on constitutional grounds that were not raised before the district court. In general, appellate courts will not address constitutional issues that were not raised in the district court, *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). Moreover, we have addressed constitutional vagueness and overbreadth challenges to the Act and have concluded that the statute is not unconstitutional. *State v. Romine*, 757 N.W.2d 884, 897 (Minn. App. 2008), *review denied* (Minn. Feb. 17, 2009).