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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2047**

Ogonnaya V. Ofor, petitioner,
Appellant,

vs.

Chika Lisa Ofor,
Respondent.

**Filed December 19, 2011
Affirmed
Peterson, Judge**

Ramsey County District Court
File No. 62-DA-10-1007

Ogonnaya Vincent Ofor, New Brighton, Minnesota (pro se appellant)

Lisa Marie Lamm-Bachman, Foley & Mansfield, PLLP, Minneapolis, Minnesota (for
respondent)

Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from an order for protection (OFP), appellant argues that (a) he was denied equal protection and due process of law because respondent had counsel while he did not, despite the fact that both were indigent; (b) the referee hearing the case should have honored his removal request; (c) the referee violated due process by denying a continuance to allow him to secure an attorney, evidence, and witnesses; (d) the referee violated his right to a fair and impartial trial when he was intimidated and humiliated in the court room and denied his freedom of expression in the court room; (e) he should have had a jury trial; (f) the 50-year duration of the OFP is excessive; (g) the record does not support the OFP; and (e) the referee violated his right to a fair trial by supporting the extension of the OFP using an allegation of stalking that was dropped. We affirm.

FACTS

The parties were married in Nigeria in March 1996 and divorced in Minnesota in December 2009. They have three minor children: J.C.O., born in August 1998; K.N.O., born in July 2000; and A.L.O., born in December 2001.

In August 2007, respondent-mother Chika Lisa Ofor and the three children moved out of the parties' home. Mother obtained an order for protection (OFP) against appellant-father Ogonnaya V. Ofor, which prohibited father from contacting mother or the children directly or indirectly. Father violated the OFP by contacting mother's brother, who lived in West Africa, and offering to bring the brother to the United States if

he would convince mother to return to father. Father also offered the brother money to write a letter, purportedly from mother's father, urging mother to return to father.

In December 2008, mother reported to police that father was contacting two of her brothers on a daily basis and offering them bribes to have them contact mother on father's behalf. After mother contacted police again in June 2009 about father continuing to violate the OFP, a police officer spoke to one of mother's brothers, who confirmed that father was contacting mother's family members on a daily basis. The brother also stated that father had made threats against mother's whole family and that, one week earlier, father had told the brother that, if mother did not return to father, father was going to lose his temper and anything could happen.

In September 2009, mother obtained an extension of the OFP until August 28, 2010.

In the parties' marital-dissolution trial, mother testified that father committed multiple acts of abuse against the children. When J.C.O. was two weeks old, father spanked him on the backside hard enough to leave marks. When J.C.O. was 18 months old, father slapped and choked him, leaving marks around his neck. When J.C.O. was a toddler and accidentally disconnected a phone call, father knocked him unconscious. Father punished K.N.O. for being left handed, which father believed was a curse, by taking his food away, hitting him, and banging K.N.O.'s hand on a table to prevent him from using that hand to eat. Father struck K.N.O. with a stick that was about four feet long, which resulted in K.N.O. falling and bleeding from the ears and skull. When driving after drinking with A.L.O. in the car with him, father stopped suddenly, which

caused A.L.O.'s head to hit the dash board and resulted in a bump on the head. In January 2006, father hit A.L.O. and pushed him down, and, in June 2007, father threw a shoe at A.L.O., hitting the child on the head. Father called A.L.O. stupid and ugly and would hit him when he cried. In the dissolution proceeding, the district court found that father had committed acts of domestic violence against each child. Mother and all three children have been diagnosed with post-traumatic stress disorder (PTSD).

On August 31, 2010, mother petitioned for a new OFP. A referee conducted a November 2, 2010 evidentiary hearing on mother's petition. On the same day, the same referee also conducted a hearing on the parties' separate motions in the dissolution proceeding. At the hearing on mother's petition, mother testified that, in 2010, father contacted the children's therapist and another individual in an attempt to obtain mother's address. Father obtained the address from a third individual and sent a copy of a court document to mother's residence.¹

In a November 2, 2010 order, the referee granted an OFP for 50 years as to mother and ten years as to the children. The district court affirmed the November 2 order.² This appeal followed.³

¹ The marital-dissolution Judgment and Decree, which includes findings recounting mother's testimony at the dissolution trial, was admitted at the hearing on the petition for an OFP.

² "The recommended findings and orders of a referee become the findings and orders of the court when confirmed by a judge." Minn. Stat. § 484.70, subd. 7(c) (2010).

³ The referee also issued a November 9, 2010 order addressing the parties' motions in the marital-dissolution proceeding. Father attempted to appeal both the OFP order and the order in the marital-dissolution, but because the two actions were not consolidated, father was not entitled to file a joint appeal. This court construed the appeal as taken from the

DECISION

I.

Father argues that he was denied equal protection and due process of law because mother had counsel but father did not, despite the fact that they are both indigent. But father did not obtain an in forma pauperis order finding that he is indigent until after the November 2 hearing. Furthermore, the right to counsel does not attach in non-criminal proceedings, that is, proceedings that do not threaten incarceration. *See State v. Host*, 350 N.W.2d 479, 481-82 (Minn. App. 1984) (holding that uncounseled petty misdemeanor pleas may be used to enhance a subsequent offense because a petty misdemeanor is not a crime and thus, there is no right to counsel).

II.

Father argues that the referee who presided at the November 2 hearing should have honored his removal request. “No referee may hear a contested trial, hearing, motion or petition if a party or attorney for a party objects in writing to the assignment of a referee to hear the matter. The court shall by rule, specify the time within which an objection must be filed.” Minn. Stat. § 484.70, subd. 6 (2010). The objection must be made within ten days after receiving notice of the assignment of the referee and no later than commencement of any hearing before a referee. Minn. R. Gen. Pract. 107.

November 2, 2010 order in the domestic-abuse proceeding and dismissed the part of the appeal from the order in the dissolution.

Father did not object to the referee hearing the petition until after the hearing began. Therefore, his objection was not timely. Father argues that the referee should have been removed for bias. But father makes no showing of bias and cites only his dissatisfaction with the procedures followed during the hearing and the decision made by the referee.

III.

Father argues that the referee violated due process by denying a continuance to allow him to secure an attorney, evidence, and witnesses. The decision to grant a continuance is “within the sound discretion of the district court, and its decision will not be reversed unless it has abused its discretion.” *Dunham v. Roer*, 708 N.W.2d 552, 572 (Minn. App. 2006), *review denied* (Minn. Mar. 28, 2006).

Father sought a continuance to obtain counsel and to obtain witnesses to testify. The referee denied the continuance, stating that father had had two months to prepare for the hearing and noting that father had a pattern of waiting until the middle of a hearing to request a continuance. Father does not offer any explanation why he could not have had his witnesses at the hearing. And, as we have already discussed, the right to an attorney does not attach in this civil proceeding. We find no abuse of discretion.

IV.

Father argues that his right to a fair and impartial trial was violated when he was intimidated and humiliated in the court room and denied his freedom of expression in the court room. Father contends that he was intimidated when the referee told him during the hearing to face her directly and remain motionless in his chair. Our review of the

transcript reveals that the referee simply asked father to face her, rather than mother, during the hearing. At the same time, the referee directed mother and others in the hearing room where to sit. *See* Minn. Gen. R. Prac. 2.02(e) (judge shall be responsible for order and decorum in the court). It is not apparent how these instructions could have intimidated father or prevented a fair and impartial hearing. Father does not explain how he was denied his freedom of expression in the court room.

V.

Father argues that he should have had a jury trial. “The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy.” Minn. Const. art. I, § 4. “This provision is intended to continue, unimpaired and inviolate, the right to trial by jury as it existed in the Territory of Minnesota when our constitution was adopted in 1857.” *Abraham v. Cnty. of Hennepin*, 639 N.W.2d 342, 348 (Minn. 2002). It does not apply to rights and remedies later created by the legislature. *See Hawley v. Wallace*, 137 Minn. 183, 184-88, 163 N.W. 127, 128-29 (1917) (election contest based on violation of corrupt practices act); *see also Breimhorst v. Beckman*, 227 Minn. 409, 433-34, 35 N.W.2d 719, 734 (1949) (workers’ compensation). Father cites no authority that the right to obtain an OFP existed when the Minnesota Constitution was adopted. There is no right to a trial by jury in an OFP proceeding.

VI.

Father argues that the record does not support the OFP, the 50-year duration of the OFP is excessive, and the referee violated his right to a fair trial by granting the OFP

based on an allegation of stalking that was dropped. The decision to grant or extend an OFP under Minn. Stat. § 518B.01 (2010) is committed to the district court's discretion. *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 we are "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.

Minn. Stat. § 518B.01, subd. 6a (2010), states:

(a) The court may extend the terms of an existing order or, if an order is no longer in effect, grant a new order 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 the act of 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.

A petitioner does not need to show that physical harm is imminent to obtain an extension or a subsequent order under this subdivision.

(b) Relief granted by the order for protection may be for a period of up to 50 years, if the court finds:

(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.

Father argues that the referee supported the granting of the OFP using a stalking allegation that was dropped. But the referee also based the OFP on father's having violated an OFP on two or more occasions. Mother's testimony and the police reports admitted into evidence at the November 2, 2010 hearing support the finding that father violated an OFP on two or more occasions. The testimony and police reports show that father contacted mother's brothers on a daily basis, offered them bribes to have them contact mother on father's behalf, and made threats against mother and her whole family. Father also obtained mother's address and sent mail to her.

Minn. Stat. § 518B.01, subd. 6a(a)(1), allows the district court to grant an OFP on a showing that the respondent violated a prior or existing OFP, and Minn. Stat. § 518B.01, subd. 6a(b)(1), permits an OFP of up to 50 years on a showing that the respondent violated a prior or existing OFP at least twice. The finding that father violated an OFP on two or more occasions is supported by the record and is not based on a mistake of law. The district court did not abuse its discretion in granting the OFP.

Finally, father raises numerous challenges to the credibility of evidence presented by mother. Witness credibility is the province of the fact-finder. *Melius v. Melius*, 765 N.W.2d 411, 417 (Minn. App. 2009). Appellate courts give great deference to district court determinations of witness credibility. *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009).

Affirmed.