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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1080**

In the Matter of: Megan Marie Tschida,
individually and o/b/o Logan Richard Schroeder
and Rylee Kay Tschida, petitioner,
Appellant,

vs.

Donald Gerald Hemmesch, Jr.,
Respondent.

**Filed June 11, 2012
Reversed and remanded
Larkin, Judge**

Stearns County District Court
File No. 73-FA-11-2906

Brent R. Thompson, St. Cloud Area Legal Services, St. Cloud, Minnesota (for appellant)

Donald G. Hemmesch, Jr., Albany, Minnesota (pro se respondent)

Considered and decided by Connolly, Presiding Judge; Larkin, 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UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges the district court's dismissal of her petition for an order for protection (OFP) under the Domestic Abuse Act, Minn. Stat. § 518B.01 (2010), arguing that the district court erred in concluding that it lacked "jurisdiction" to issue an OFP. We reverse and remand for issuance of an OFP.

FACTS

In April 2011, appellant Megan Tschida petitioned the district court for an OFP against respondent Donald Hemmesch. The district court held a hearing on the petition, and the following evidence was presented. Tschida and Hemmesch were involved in a romantic or sexual relationship for approximately one and one-half years. During that time the parties saw each other weekly and sometimes daily. The relationship ended in July 2009. Tschida's son was born in 2010, and she believes that Hemmesch is the child's father. Hemmesch never took a paternity test, did not sign a recognition of parentage, and is not listed as the father on the child's birth certificate.

Tschida testified regarding three interactions between she and Hemmesch that resulted in Hemmesch being charged with and convicted of three domestic-abuse-related offenses.¹ Tschida testified that in July 2009, Hemmesch hit Tschida in the chest and

¹ In district court, Hemmesch did not challenge Tschida's testimony regarding his criminal history, and he did not file a brief in this appeal. Although the details regarding the exact dates of his offenses and convictions are unclear, the record does include several criminal judgments/warrants of commitment documenting Hemmesch's violations of domestic-abuse laws. The judgments indicate that Hemmesch tendered guilty pleas to the charged offenses between November 13, 2009 and October 13, 2010.

arms and pushed her, bruising her chest and arms. Tschida testified that Hemmesch was convicted of domestic assault and that the district court issued a domestic abuse no contact order (DANCO) directing Hemmesch to have no contact with Tschida. Tschida testified that in August 2009, Hemmesch violated the DANCO by calling Tschida and sending her text messages and that he was convicted of a crime for this conduct. Tschida also testified that in June 2010, Hemmesch once again violated the DANCO when he approached Tschida at a bar and pushed her to the ground, causing her to hit her head. Tschida testified that she received medical attention at a hospital for the resulting injury and that Hemmesch was convicted of a crime for this conduct.

The underlying petition for an OFP was based on an incident that occurred on March 12, 2011. On that date, Tschida and Hemmesch were present at the same bar. Hemmesch approached her and said, “shouldn’t you be at home?” Tschida testified that Hemmesch appeared intoxicated. When Tschida left the bar, Hemmesch followed her outside and yelled profanities at her. A witness testified that he had to physically restrain Hemmesch to prevent him from “[getting] to [Tschida].”

After the hearing, the district court issued an order dismissing Tschida’s petition “because there was not ‘domestic abuse’ [as] defined in Minnesota Statute 518B.01, subd. 1.” This appeal follows.

DECISION

I.

The decision to grant an OFP under the Domestic Abuse Act is within the district court’s discretion. *See* Minn. Stat. § 518B.01, subd. 6(a) (stating, “[u]pon notice and

hearing, the court *may* provide relief” (emphasis added)); *Braend ex rel. Minor Children v. Braend*, 721 N.W.2d 924, 926-27 (Minn. App. 2006). “A district court abuses its discretion if its findings are unsupported by the record or if it misapplies the law.” *Braend*, 721 N.W.2d at 927.

In dismissing Tschida’s petition for an OFP, the district court concluded that “[b]ecause the parties are not, and since June 2009, have not had a family or household relationship under Minnesota Statute 518B.01, [s]ubd. 2, the court does not have jurisdiction to issue an [OFP] in this case.” Because there was no assertion that the district court lacked personal jurisdiction over Hemmesch, *see Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992) (explaining that personal jurisdiction relates to a court’s authority over a person), we assume the district court’s reference is to subject-matter jurisdiction.

“Subject-matter jurisdiction is a court’s power to hear and determine cases of the general class or category[ies] to which the proceedings in question belong.” *Bode v. Minn. Dep’t of Natural Res.*, 594 N.W.2d 257, 259 (Minn. App. 1999), *aff’d* 612 N.W.2d 862 (Minn. 2000). The Minnesota Constitution provides that the district court shall have “original jurisdiction in all civil and criminal cases.” Minn. Const. art. VI, § 3. Minnesota statute provides that the district courts shall have original jurisdiction in all civil actions within their respective districts. Minn. Stat. § 484.01, subd. 1 (2010). The Domestic Abuse Act sets forth specific requirements regarding “[c]ourt jurisdiction” in proceedings under the act, and there was no assertion in district court that the requirements are not satisfied in this case. Minn. Stat. § 518B.01, subd. 3. In sum, there

can be no dispute that the district court had subject-matter jurisdiction to issue an OFP in this case.² We therefore construe the district court’s jurisdictional conclusion as a determination that appellant failed to meet her burden to show “domestic abuse . . . committed against a family or household member by a family or household member” as those terms are defined under the Act. *See* Minn. Stat. 518B.01, subds. 2(a) (defining domestic abuse), 4(b) (“A petition for relief shall allege the existence of domestic abuse.”).

II.

A victim of domestic abuse may petition for relief in the form of an OFP. *Id.*, subds. 4, 6. Domestic abuse is defined to include several acts, but only if those acts are “committed against a family or household member by a family or household member.” *Id.*, subd. 2(a). The act defines seven categories of family or household members, including “persons involved in a significant romantic or sexual relationship.” *Id.*, subd. 2(b)(7). The Domestic Abuse Act provides additional guidance for determining whether a relationship qualifies as “a significant romantic or sexual relationship”:

In determining whether persons are *or have been involved* in a significant romantic or sexual relationship under clause (7), the court *shall* consider [1] the length of time of the relationship; [2] type of relationship; [3] frequency of interaction between the parties; and, [4] if the relationship has terminated, length of time since the termination.

² The supreme court has warned against the misuse of the term “jurisdictional.” *See In re Civil Commitment of Giem*, 742 N.W.2d 422, 427 n.6 (Minn. 2007) (quoting the United States Supreme Court’s admonition that “[t]he label ‘jurisdictional’ should be used only for prescriptions delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction) falling within a court’s adjudicatory authority”).

Id., subd. 2(b) (emphasis added).

The district court dismissed Tschida's petition because it concluded that the parties are not family or household members as defined by the Domestic Abuse Act. In so concluding, the district court explained that "[w]hile the parties had a significant romantic or sexual relationship before July 2009, that relationship has not existed since July 2009." But this court has held that "[a] former relationship may qualify as a significant romantic or sexual relationship under the Domestic Abuse Act." *Sperle v. Orth*, 763 N.W.2d 670, 671 (Minn. App. 2009). "[A] mere assertion that parties were once involved in a significant romantic or sexual relationship does not, by itself, satisfy the family-or-household-member requirement of the Domestic Abuse Act." *Id.* at 674. Instead, "[t]he district court must consider the four statutory factors that are contained in section 518B.01 subdivision 2(b), to determine whether a former relationship qualifies as a significant romantic or sexual relationship under the Domestic Abuse Act." *Id.*

Tschida argues that the district court erroneously "considered only one of the statutory factors set forth in [section] 518B.01, subdivision 2(b)(7) in determining whether Ms. Tschida's on-going relationship with Mr. Hemmesch came within the protection afforded by the statute," namely, the length of time since termination. She further argues that the district court erroneously reasoned that protection under the Domestic Abuse Act was not available because the parties' relationship ended in July 2009. Tschida asserts that "[t]his is precisely the interpretation of the law" that was rejected by this court in *Sperle*. We agree. *See id.* at 673-74 (concluding that the legislature's intent to include former relationships within the significant-romantic-or-

sexual-relationship category is clearly discernible from the plain and unambiguous language of section 518B.01, subdivision 2(b)).

Tschida testified regarding the length of the parties' relationship, the type of relationship, the frequency of the parties' interactions during the relationship, the date when the relationship ended, and the type and frequency of the parties' interactions after the relationship ended. Tschida also testified regarding various interactions between the parties regarding Tschida's son, which occurred after the relationship ended. In addition, the record establishes interactions between Tschida and Hemmesch that resulted in Hemmesch being convicted of domestic-abuse-related offenses after the relationship ended.

Despite the record evidence of on-going contact between the parties, the district court's order does not reflect consideration of all four of the relevant statutory factors. Instead, the order indicates that the district court focused almost exclusively on the length of time since the relationship ended. Because the district court did not give due consideration to all four of the statutory factors, the district court erred in concluding that the parties are not family or household members. *See id.* at 674-75.

Moreover, the record supports a conclusion that the parties are family or household members within the meaning of the Domestic Abuse Act. The parties at one time had a lengthy romantic or sexual relationship. Although the romantic and sexual aspects of their relationship ended in 2009, they continued to have a relationship in which they communicated and interacted, and in which Hemmesch caused Tschida physical harm and violated no-contact orders that were put in place to protect her. *See Minn. Stat.*

§ 629.75, subd. 1(a) (2010) (stating that a court may issue a domestic-abuse no-contact order against a defendant for domestic abuse). For example, the district court found that Hemmesch “has convictions for assault and violation of no contact orders between November 13, 2009 and December 17, 2010” and that he

has a pattern of frightening and intimidating [Tschida] when he has been drinking, as he was the night of March 11-12, 2011, approaching and talking to her, as he did that night, watching her, as he did that night, following her, as he did that night, and yelling at her, as he did that night.

Because the district court concluded that “[i]f the court had jurisdiction, the court would find that there was domestic abuse in that [Hemmesch] by his verbal comment to [Tschida] that night, his watching her, his following her out of the bar and his yelling at her showed his present intent to cause her fear and to intimidate her” and Hemmesch does not challenge that conclusion on appeal, we reverse and remand solely for the district court to issue an OFP. *See Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989) (stating that an OFP is warranted when a person manifests a present intention to inflict fear of imminent physical harm, bodily injury, or assault on the person’s family or household member and that a history of abusive behavior is a factor in determining whether an OFP is warranted). The terms and conditions of the OFP are entrusted to the district court’s discretion on remand.

Reversed and remanded.