

*This opinion is nonprecedential except as provided by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
A22-0412**

In the Matter of
Stacy Joy Fehr On Behalf of Minor Children,
Respondent,

vs.

Corbin James Fehr,
Appellant.

**Filed December 12, 2022
Affirmed
Kirk, Judge***

Stevens County District Court
File No. 75-FA-21-268

Ruta Johnsen, Nancy Zalusky Berg, LLC, Minneapolis, Minnesota; and

Charlotte Culbertson, Culbertson Law, PLLC, Morris, Minnesota (for respondent)

Bridget R. Landry, Kelsey B. Daniels, Cordell Law, LLP, Edina, Minnesota (for appellant)

Considered and decided by Gaitas, Presiding Judge; Segal, Chief Judge; and Kirk,
Judge.

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

NONPRECEDENTIAL OPINION

KIRK, Judge

Appellant-father challenges the district court's order granting respondent-mother's petition on behalf of the parties' two minor children for an order for protection (OFP) against father. Father argues the district court abused its discretion in determining that father committed acts of domestic abuse. Because the district court's factual findings are supported by the record, we affirm.

FACTS

Appellant Corbin James Fehr and respondent Stacy Joy Fehr married in 2007. The parties have two minor children, a twelve-year-old daughter and an eight-year-old son. The parties divorced in February 2021.

On October 3, 2021, mother brought the children to her church in Morris. Father often attends the same church, though father agreed his "church community" is in Iowa where he resides. Before the afternoon service, daughter and mother informed father that daughter was not going to sit with father during the service. Daughter was "upset" after the encounter and "was crying and [] was shook up."

After the service, daughter went to say goodbye to father. Daughter was sitting on father's lap when son also came to say goodbye. Son approached father and said goodbye and "punched [father] in the nose." After being hit, father "grabbed" son's arm to tell son not to "behave that way." Father testified that son was "twisting trying to get away" and that the encounter "happened in a matter of a few seconds." While father was grabbing son's wrist, daughter tried to get away from father and father agreed that he "didn't let her

up.” Father explained that daughter “got nervous because she thought that [he] was going to hurt [son].” Father also testified that he held daughter “just long enough to tell her that it’s okay” and that he held her for “less than 30 seconds, possibly less than . . . 15 seconds.”

Son was crying when he returned to mother and told her “Dad hurt my arm, he twisted my arm.” Mother testified that she went to daughter and that father “did not let [daughter] go right away,” and that daughter “tried a couple times to get up.” Father agreed that daughter “seemed distraught” when she got up from his lap. Mother then took the children out of the church.

On October 7, 2021, mother petitioned for an OFP, and the district court granted an emergency ex parte OFP. On October 29, the district court heard testimony during a remote OFP hearing from mother, father, and a church member who was present, but did not see the incident.

The district court issued a January 27, 2022, order granting mother’s petition for an OFP. The district court found that “[a]cts of domestic abuse have occurred” and cited that “[father] twisted son[]’s arm, causing [son and daughter] to be upset and fearful of him; applied excessive and unneeded restraint to [daughter] at church.”

Father appeals.

DECISION

“We review the decision to grant an OFP for an abuse of discretion.” *Thompson v. Schrimsher*, 906 N.W.2d 495, 500 (Minn. 2018). On appeal from a district court’s decision on whether to grant an OFP, “[a]n appellate court will ‘neither reconcile conflicting evidence nor decide issues of witness credibility.’” *Aljubailah v. James*, 903 N.W.2d 638,

643 (Minn. App. 2017) (quoting *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004)). We review the district court’s factual findings for clear error. *In re Ekman v. Miller*, 812 N.W.2d 892, 895 (Minn. App. 2012). Regarding the clear-error standard of review, the supreme court stated:

[W]e have consistently said that findings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole. In applying the clear-error standard, we view the evidence in a light favorable to the findings. . . . We will not conclude that a fact[-]finder clearly erred unless, on the entire evidence, we are left with a definite and firm conviction that a mistake has been committed.

In re Civ. Commitment of Kenney, 963 N.W.2d 214, 221 (Minn. 2021) (quotations and citation omitted).

The Minnesota Domestic Abuse Act provides that a district court may issue an OFP in cases involving domestic abuse. Minn. Stat. § 518B.01, subd. 4 (2020). The act defines “domestic abuse” as any of the following committed against a family or household member: “(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 . . . ; or interference with an emergency call” Minn. Stat. § 518B.01, subd. 2(a) (2020).

Here, the district court’s sole finding is that, “Acts of domestic abuse have occurred, including the following: respondent twisted son[]’s arm, causing [son and daughter] to be upset and fearful of him; applied excessive and unneeded restraint to [daughter] at church.”

Father makes two arguments that the district court abused its discretion. First, father argues that the district court abused its discretion by determining that father's use of force was not a reasonable exercise of force. Second, father argues that the district court abused its discretion by finding that there was sufficient evidence to infer that father intended to inflict fear of imminent physical harm, bodily injury, or assault on the children. We address each argument in turn.

A. Use of force

Father argues that under Minn. Stat. § 609.06, subd. 1(6) (2020), a parent may use reasonable force “to restrain or correct” a child. Father argues that in grabbing son's arm “he wanted to physically emphasize that it was inappropriate for [son] to hit him in the nose.” Father also contends that by holding daughter down he reasonably exercised force so that he could “explain to her that everything was okay.”

Here, the district court did not make an explicit finding of fact that father's actions were unreasonable.¹ Still the district court's determination that domestic abuse occurred is supported by the evidence. Father agrees that he grabbed son's arm and son was twisting and trying to get away. Father also agrees that he held down daughter while daughter was afraid and trying to get away. Viewed in the light most favorable to the finding that father's

¹ Father analogizes to the nonprecedential case of *Wangness v. Penkert*, where this court affirmed the district court's issuance of an OFP and rejected appellant's argument that the district court needed a specific finding that the force used was not reasonable. No. A21-0896, 2022 WL 274748, at *3 (Minn. App. Jan 31, 2022). The *Wangness* opinion also commented that, as here, the appellant failed “to provide any precedential caselaw examples of a court concluding a person used reasonable force under [Minn. Stat. § 609.06,] subdivision 1(6).” *Id.*

actions were unreasonable, the district court did not clearly err. We cannot “engage in fact-finding anew, even if the court would find the facts to be different if it determined them in the first instance.” *Kenney*, 963 N.W.2d at 222 (quotation omitted).

Thus, the district court did not abuse its discretion in determining that father’s actions of restraining daughter and twisting son’s arm constituted physical harm under Minn. Stat. § 518B.01, subd. 2(a).

B. Intent

An OFP is justified if a person manifests a present intention to inflict fear of imminent physical harm, bodily injury, or assault. *See Boniek v. Boniek*, 443 N.W.2d 196, 198 (Minn. App. 1989) (citing Minn. Stat. § 518B.01, subd. 2 (1988)). Present intent to inflict fear of imminent physical harm, bodily injury, or assault can be inferred from the totality of the circumstances, including a history of past abusive behavior. *Id.* An overt physical act is not necessary to support the issuance of an OFP. *Hall v. Hall*, 408 N.W.2d 626, 629 (Minn. App. 1987) (concluding that depending on the words and circumstances, a verbal threat can inflict fear of imminent physical harm, bodily injury, or assault), *rev. denied* (Minn. Aug. 19, 1987).

Father challenges the district court’s determination that father intended the children “to be upset and fearful of him.” The record evidence on father’s intent is limited to his own testimony. Father testified that he grabbed son’s arm after son punched him in the nose to physically discourage son from hitting people. Father also testified that he held daughter down while she was trying to get up because he wanted her to know everything was okay.

The district court's finding of fact that father caused the children "to be upset and fearful of him" and the district court's issuance of the OFP suggest that the district court did not find father's testimony credible. We defer to the district court's credibility determinations. *See Pechovnik v. Pechovnik*, 765 N.W.2d 94, 99 (Minn. App. 2009) ("The district court's findings implicitly indicate that the district court found respondent's testimony credible. We defer to this credibility determination.").

Because the district court determined that domestic abuse occurred, the district court can look to the totality of the circumstances to determine whether to grant an OFP. *See Thompson*, 906 N.W.2d at 500. Mother testified that daughter is in counseling to overcome trauma resulting from daughter witnessing "domestic incidents" between her mother and father. Mother also testified that the children "were scared to go to church. They did not want to go back if [father] was going to be there." In her petition for an OFP, mother described how the children are afraid that if they go to church father will "pressure them, and if they do not do what he wants that [father] will berate them, physically abuse them, or physically restrain them so that they do what [father] wants." Mother also stated in her petition that father "has a history of getting physical with [son] to the point of injury."

While father's testimony is the only evidence of his intent, we defer to the district court's credibility determinations and conclude the district court did not abuse its discretion in determining father had the requisite intent.

Affirmed.