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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-591**

In the Matter of:

Jessica Lynn Hafermann  
and obo Parker, Kendall and Tanner Hafermann, petitioner,  
Respondent,

vs.

Kevin Gerald Hafermann,  
Appellant.

**Filed January 4, 2011  
Affirmed in part and reversed in part  
Kalitowski, Judge**

Scott County District Court  
File No. 70-FA-10-5211

Kay Nord Hunt, Nicholas A. Dolejsi, Brett Clark, Lommen, Abdo, Cole, King & Stageberg, P.A., Minneapolis, Minnesota; and

R. Kathleen Morris, Morris & Wolf, Shakopee, Minnesota (for respondent)

Farhan Hassan, Shelley M. Meyer, Clausen & Hassan, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and  
Huspeni, Judge.\*

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

## UNPUBLISHED OPINION

**KALITOWSKI**, Judge

In this appeal of an order for protection (OFP), appellant Kevin Gerald Hafermann argues that the district court abused its discretion by granting the OFP because the record does not support a finding of domestic abuse against respondent Jessica Lynn Hafermann. Appellant also contends that the district court abused its discretion by granting respondent's oral motion to amend the OFP petition to include the parties' children. We affirm in part and reverse in part.

### DECISION

#### I.

Appellant argues that the district court abused its discretion by granting the OFP because respondent presented "limited evidence" showing that appellant was responsible for the alleged incidents of domestic abuse. Appellant further contends that even if the events are true, they are "insufficient to support a legal conclusion of physical harm or intent to inflict imminent fear of physical harm." We disagree.

The district court may issue an OFP under the Domestic Abuse Act (the Act), Minn. Stat. § 518B.01 (2010), based on an affidavit alleging that a person has committed an act of domestic abuse against a family or household member. Minn. Stat. § 518B.01, subd. 4(a)-(b). "Domestic abuse" is defined as "physical harm, bodily injury, or assault; [or] the infliction of fear of imminent physical harm, bodily injury, or assault; [or] terroristic threats." *Id.*, subd. 2(a). This language requires "either a showing of present harm, or an intention on the part of appellant to do present harm." *Kass v. Kass*, 355

N.W.2d 335, 337 (Minn. App. 1984). This court reviews a district court's decision to issue an OFP for an abuse of discretion. *Pechovnik v. Pechovnik*, 765 N.W.2d 94, 98 (Minn. App. 2009). The district court abuses its discretion if its findings are not supported by evidence in the record or if its conclusions are contrary to law. *Id.*

Here, the district court based the OFP on findings regarding several incidents. The first incident involved three vehicles without license plates following respondent to work one morning. When respondent arrived at work after being followed, she received a text message from appellant that read: "went the wrong way." Respondent believed that appellant was involved in having her followed, or he would not have known that she took a different route to work that day. Respondent testified that she was "scared" by the incident because of the way appellant had been acting toward her recently, and she contacted the police to report the incident.

A second incident occurred two days later, when respondent returned after appellant had left their home, and discovered that the back door of the garage had been left open. Appellant left a pair of black gloves, his rifle, and a box of shell casings in plain view. Respondent stated that she thought that appellant had "set up for someone to come and kill [her] that night," so she brought the children into the house and locked all the doors.

A third incident referenced by the district court happened one month later, when respondent thought that appellant had tampered with the lug nuts on a wheel of her car. She called the police, who told her never to drive the car again if she sees something like this, and that she should file a petition for an OFP.

We conclude that the district court's findings are supported by the record and are sufficient to sustain a conclusion that domestic abuse occurred, making the issuance of an OFP on behalf of respondent appropriate. The district court could properly infer that appellant was responsible for having respondent followed by several cars, leaving a gun in plain view at their home, and tampering with the lug nuts on respondent's car; and that these acts are signs of intimidation showing that appellant had a present intent to inflict fear of bodily harm. Although appellant provided different versions of the incidents, we must assume that the district court found respondent credible and appellant not credible. *See Gada v. Dedofo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that this court will not reconcile conflicting evidence nor determine witness credibility). Therefore, based on the totality of the circumstances, we cannot conclude that the district court abused its discretion in issuing the OFP. *See Pechovnik*, 765 N.W.2d at 99 (stating that present intent to inflict fear of imminent physical harm may be inferred from the totality of the circumstances).

## II.

Appellant argues that the district court abused its discretion by granting respondent's oral motion to amend the OFP petition to include the parties' three minor children. We agree.

The Act requires the submission of a petition for an OFP to include an affidavit made under oath that states "specific facts and circumstances from which relief is sought." Minn. Stat. § 518B.01, subd. 4. The original OFP petition that respondent filed on her own behalf did not include any specific facts or incidents involving the children.

At the OFP hearing, respondent made an oral motion on the record to amend the OFP petition to include the children. But her motion was not accompanied by an affidavit stating specific facts and circumstances of domestic abuse against the children. And no dates and incidents specific to the children were included in respondent's motion to amend the OFP petition. Thus, the original petition and the amended petition lacked the requisite detail under the Act to allow the district court to grant an OFP on behalf of the children. Therefore, the district court abused its discretion by granting respondent's motion, and we reverse the amendment of the OFP petition.

The state argues that appellant waived any objection to amending the petition to include the children. After the district court asked appellant if he would like additional time to prepare his response to the motion to amend, appellant responded that he was ready to proceed and address the inclusion of the children in the OFP. Although this may amount to a waiver of any due-process right appellant had to additional time to respond to the motion to amend the petition, the record does not indicate that he was informed of or waived his right to have the petition comply with the Act.

### **Parenting-Time Restrictions**

If an OFP is awarded on behalf of one parent of minor children against the other parent, the Act permits a district court to include a parenting-time restriction. *See* Minn. Stat. § 518B.01, subd. 6(a)(4) (permitting the district court to “establish temporary parenting time with regard to minor children of the parties on a basis which gives primary consideration to the safety of the victim and the children.”). Here, the district court found that one of the children reported to her preschool teacher that appellant had “slapped her

butt and her face” and that she did not want to go home. This finding is supported by the record. Therefore, because the district court had authority under the Act to establish temporary parenting time, we affirm the parenting-time restriction included in the OFP granted on behalf of respondent.

**Affirmed in part and reversed in part.**