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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-161**

In re the Matter of: Iab Moua, petitioner,
Respondent,

vs.

Bee Yang,
Appellant.

**Filed December 28, 2010
Affirmed
Stauber, Judge**

Ramsey County District Court
File Nos. 62DAFA091423; 62FA10130

Kara Rieke, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for respondent)

Lawrence H. Crosby, Jay D. Olson, Crosby & Associates, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Halbrooks, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from the district court's grant of an order for protection (OFP) to respondent-wife, appellant-husband argues that (1) the district court deprived him of the right to procedural due process of law under the United States and Minnesota

Constitutions by refusing to accept testimony from witnesses appellant called to testify; (2) the remedial nature of the OFP statute does not allow the district court to deprive appellant of the constitutional right to due process of law; and (3) because the nature of an OFP hearing is quasi-criminal, OFP respondents should be afforded the rights of a criminal defendant. We affirm.

FACTS

Appellant Bee Yang and respondent Iab Moua met in Laos, and thereafter appellant petitioned for respondent to come to the United States as his fiancée. They resided together from February 17, 2009 through October 19, 2009 and were married on April 15, 2009. At the time this action began, respondent was pregnant with the parties' child.

On December 8, 2009, respondent filed an affidavit and petition for an OFP against appellant. The court issued an emergency ex parte OFP. An initial hearing was held on December 14, 2009, at which time the court issued an order for continuing protection and continued the case for trial.

A hearing was held in January 2010, where both parties were represented by counsel. At the hearing, respondent testified about several acts of domestic abuse committed by appellant. She testified that appellant pulled her out of the house on two or three different occasions and locked her outside. On one occasion, respondent testified that appellant dragged her outside at midnight and locked the door. It was a cold night in February or March, and she had no jacket. Respondent did not know how long she was outside, but remembers waking up in the house later with her skin red and bruised.

Respondent also testified that appellant beat her on three or four different occasions. She testified that “he will hit me, he will punch me anywhere, wherever he can hit me, arms, my body, my back, anything.” Respondent testified that the abuse would occur when she confronted appellant about a girlfriend that she learned he was seeing.

No physical evidence of abuse was presented to the court. On cross-examination, respondent acknowledged that she never made a police report. Respondent speaks no English and testified that she did not know how to contact the police. She also testified that appellant limited her contact with friends and family members, threatened her with a gun on two occasions, and told her, “if I didn’t be careful that he was going to shoot me with one bullet, just with one shot and then I would die.” She testified that this made her very afraid of him.

Respondent discovered that she was pregnant in September 2009. She testified that her husband was not happy about the pregnancy. That fall, the couple traveled to Southeast Asia. Respondent believed that they were going to visit her parents. The couple flew together to Bangkok, and then respondent went to Laos to visit her family while appellant went to Thailand for a cultural ceremony with his family. Appellant was to meet respondent in Laos, but never came. Instead, he flew back to the United States. Respondent believed that it was appellant’s intent to abandon her there. Respondent did not have her green card or travel documents because they were with her husband. She was able to return to the United States only after contacting the United States embassy in Laos.

Respondent contacted appellant by telephone once she was back in the United States. She testified:

At first he didn't know that I was back in this country and he was trying to be really nice, but once he found out I was here again he wanted to know if I was going to school, and he told me there were other people that would help me, but only to a certain extent because one thing that he was going to do to me nobody could help me.

Respondent testified that this made her very afraid, and she believed he would do something to her. Appellant told respondent that if he wanted to find out where she was, he could. Appellant asked respondent's uncle about her whereabouts, but the uncle refused to tell appellant.

Appellant also testified at length at the hearing. He stated that he never hit his wife, never bruised her, never threatened to harm her, and never pushed or dragged her out of the house. He also testified that he has never owned any guns, and did not have a girlfriend. Appellant said his wife wanted to return to her family in Laos because she did not like the fact that he had a daughter from a previous marriage who lived with them. He testified that respondent took all her belongings with her on their trip and intended to stay in Laos because she did not want to remain married to him.

Over respondent's objections, appellant testified that his wife threatened him with a knife and also tried to kill him with a knife. The district court limited appellant's testimony about respondent's relationship with his daughter, finding that the evidence was irrelevant to the issue of whether domestic abuse occurred. Appellant also sought to

testify about his good relationship with his first wife, who died of cancer, but the district court did not allow the testimony.

Appellant sought to introduce other evidence that was excluded as irrelevant to the central issue of whether appellant abused his wife. Appellant wanted Der Vang, his purported girlfriend, to testify that they were not having an affair. The district court found that this testimony was irrelevant. Appellant sought to have his nine-year-old daughter testify, which the court did not allow. Appellant also wanted his mother to testify regarding the status of the marriage and his daughter's relationship with respondent. Finally, appellant sought to introduce a sworn statement from Long Vang, a family representative who had mediated disputes between appellant and respondent, that stated that respondent was violent against her husband.

Appellant was allowed to call as a witness his "older brother" in Hmong culture, who testified that appellant did not own any guns and did not belong to a gang. The court limited the witness's testimony to these issues, and did not allow testimony regarding appellant's previous marriage or regarding the current marriage beyond the witness's personal knowledge of the alleged instances of abuse.

The court issued an OFP, finding respondent's testimony to be credible and finding that she was physically assaulted, verbally threatened, and had a reasonable fear of harm from appellant. The court awarded restitution in the amount of \$370, the amount respondent paid to replace her green card, and temporary spousal maintenance in the amount of \$400 per month. This appeal followed.

DECISION

I.

Appellant raises various constitutional arguments regarding alleged defects in the hearing process. Principally, appellant argues that he was not afforded a full hearing within the meaning of the Domestic Abuse Act because his ability to present evidence was restricted, and therefore his right to procedural due process of law was violated.

Under the due process clause, a “state may not deprive a person of life, liberty, or property without due process of law.” *R.B. v. C.S.*, 536 N.W.2d 634, 637 (Minn. App. 1995). “The fundamental requirement of due process is the opportunity to be heard at a meaningful time in a meaningful manner.” *Brooks v. Comm’r of Pub. Safety*, 584 N.W.2d 15, 19 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Nov. 24, 1998). Procedural due-process “is flexible and calls for such procedural protections as the particular situation demands.” *Id.* (quotation omitted). The question of whether a person’s due process rights have been violated is reviewed de novo. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999).

The Domestic Abuse Act (the Act) requires a district court to conduct a “hearing” within 14 days of the receipt of a petition for an order for protection. Minn. Stat. § 518B.01, subd. 5(a) (2008). A district court may also grant an ex parte order for protection if a petitioner alleges an immediate and present danger of domestic abuse. Minn. Stat. § 518B.01, subd. 7(a) (2008). If an ex parte order has been issued, the district court is required to conduct a hearing if requested by either party or if the petitioner seeks

additional relief beyond that specified in the statute. Minn. Stat. § 518B.01, subd. 5 (2008). In this case, respondent requested a hearing in her initial petition for the OFP.

The right to a “full hearing” under the Act includes the right to present and cross-examine witnesses, to produce documents, and to have the case decided on the merits. *El Nashaar v. El Nashaar*, 529 N.W.2d 13, 14 (Minn. App. 1995).¹ In *El Nashaar*, this court found that the mere appearance of counsel, without acceptance of any evidence, did not satisfy the requirement of a “full hearing” under the Act. *Id.* at 14. In a case involving a hearing on a harassment restraining order, this court determined that the hearing was not sufficient when the parties were not sworn and were not given the right to examine witnesses. *Anderson v. Lake*, 536 N.W.2d 909, 911 (Minn. App. 1995). In *Anderson*, the district court judge questioned the parties and directed the testimony, and no witnesses were sworn. *Id.* This court stated that “[t]he object of all witness examination, both direct and cross, is to elicit facts to show the truth. Cross-examination of a witness should not be restricted so long as it serves that purpose.” *Id.* Though *Anderson* involved a harassment restraining order, we interpreted the hearing requirement under that statute to be the same as that under the Domestic Abuse Act. *Id.* Finally, in *Mechtel v. Mechtel*, 528 N.W.2d 916, 920 (Minn. App. 1995), this court held that a full hearing had not occurred when no testimony was taken and the district court did not inquire as to whether the allegations of domestic abuse were true.

¹ In 2002, Minn. Stat. § 518B.01, subd. 7 was revised so that the “full hearing” requirement became simply a “hearing” requirement. See 2002 Minn. Laws ch. 304, § 10, at 442. Accordingly, earlier cases discuss the statute in terms of a “full hearing.”

Here, both parties were represented by counsel and both had the opportunity to present testimony and question witnesses. Appellant was able to extensively cross-examine respondent regarding her allegations of abuse, and specifically about her failure to report it to the police or other family members. Appellant questioned her about alleged bias, asking: “Do you understand that if you lose your green card the only way that you can stay here is if you show that your husband was violent toward you?” Appellant also cross-examined respondent about her reasons for returning to Laos, her allegations that he had a girlfriend, and whether she threatened him with a knife.

Appellant also had the opportunity to testify in response to respondent’s allegations including his denial of having a girlfriend. The district court only limited appellant when he tried to testify about his first marriage and about respondent’s relationship with his daughter. He was able to testify about his marriage with respondent and the allegations of abuse, as well as respondent’s alleged threats against him, and his belief about respondent’s motive for returning to Laos. The district court did not allow appellant to present testimony from appellant’s daughter, appellant’s mother, or the woman respondent claimed was his girlfriend. None of this proffered testimony directly related to the issue of whether appellant committed the alleged abuse, and the district court excluded it as irrelevant. The district court also refused to admit a sworn statement from Long Vang, a member of appellant’s clan, because it was ruled hearsay.

We conclude that while another hearing officer might have allowed additional witnesses or expanded testimony, the exclusion of this testimony and evidence does not amount to a deprivation of appellant’s right to a hearing, nor a violation of his procedural

due-process rights. “While the right to present witnesses is constitutionally protected, that right is not unlimited. A defendant still must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.” *State v. Quick*, 659 N.W.2d 701, 713 (Minn. 2003) (quotations omitted). Here, appellant was not restricted in his cross-examination of respondent regarding the abuse allegations, nor in his own testimony about the abuse. The district court only excluded evidence that was collateral to the issue of whether the abuse occurred, including respondent’s relationship with appellant’s daughter, appellant’s first marriage, and respondent’s threats against appellant. Appellant conceded that there was no cross-petition for domestic abuse committed by his wife against him. Appellant also did not claim that he acted in self-defense; he simply denied all of the allegations of abuse.

Appellant appears to argue that the district court’s rulings were more favorable to respondent due to the remedial nature of the statute. The record does not support this assertion and any such argument is without merit. This court has stated that “[a]s a remedial statute, the Domestic Abuse Act receives liberal construction.” *Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992). The Act is “remedial solely in favor of an injured party,” and the “construction of the statute may not be expanded in a way that does not advance its remedial purpose.” *Id.* This court has noted the Act’s remedial nature only as a rule of construction when interpreting ambiguous language of the act. *See Sperle v. Orth*, 763 N.W.2d 670, 673 (Minn. App. 2009) (determining whether a former relationship may qualify as a “significant romantic or sexual relationship” under

the Act); *Swenson*, 490 N.W.2d at 670 (determining whether the Act’s language “other relief as it deems necessary” permits granting relief to the responding party). Because there is no issue regarding the Act’s interpretation in this case, discussion of the Act’s remedial purpose is unnecessary.

Finally, appellant argues that a respondent to an OFP petition should be afforded the same constitutional rights as a criminal defendant because an OFP is “quasi-criminal” in nature. This argument is also without merit. Appellant does not indicate which constitutional protections he has been deprived of that a criminal defendant would have been afforded. Appellant seems to argue that both parties in an OFP hearing should have the right to appointed counsel. In certain criminal proceedings and under certain circumstances, a district court must appoint counsel for a defendant. *See* Minn. R. Crim. P. 5.02. But general civil proceedings do not create a right to counsel. *Watson v. Moss*, 619 F.2d 775, 776 (8th Cir. 1980) (“There is no constitutional or statutory right for an indigent to have counsel appointed in a civil case.”); *see Reed v. Albaaj*, 723 N.W.2d 50, 56 (Minn. App. 2006). *But see* Minn. Stat. § 260C.163, subd. 3 (2008) (permitting appointment of counsel in child-protection proceedings as authorized by statute).

A petition for an order for protection is a civil matter. *See* Minn. Stat. § 518B01, subd. 5(d) (2008) (requiring service of notice of an OFP hearing to occur as provided in the rules of civil procedure); subd. 13(f) (2008) (stating that an OFP based judgment for restitution is enforceable as a civil judgment). Appellant points to a federal statute permitting the deportation of aliens; however, this statute applies only to a violation of an order for protection, not simply the issuance of one. Appellant also makes a general

allegation that OFP hearings are often conducted in haste and OFP respondents are pressured into simply allowing the order to be entered. Appellant does not allege that this occurred here, nor does the record reflect it. We conclude that the hearing conducted by the district court did not deprive appellant of his rights under the Act, nor did it not violate his due process rights.

II.

Appellant argues that the district court erred in refusing to accept testimony from witnesses he called to testify. Whether an evidentiary ruling amounts to a violation of a party's constitutional rights is a question of law this court reviews de novo. *State v. Peterson*, 764 N.W.2d 816, 821 (Minn. 2009). As discussed above, the district court's exclusion of evidence does not amount to a constitutional violation. But, "[e]ven when a defendant alleges that his constitutional rights were violated, evidentiary questions are reviewed for an abuse of discretion." *Id.* Evidentiary rulings are committed to the sound discretion of the district court and will be reversed only when there has been a clear abuse of discretion. *Kronig v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997). A party must also show prejudice by the error. *Id.* An evidentiary ruling is prejudicial only if it might reasonably have changed the result of the trial. *W.G.O. ex rel. A.W.O. v. Crandall*, 640 N.W.2d 344, 349 (Minn. 2002).

The district court excluded the testimony of several potential witnesses, finding the testimony to be irrelevant. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable." Minn. R. Evid. 401. Here, the only material issue

before the district court was whether appellant committed domestic abuse against his wife, as defined by Minn. Stat. § 518B.01, subd. 2.

Appellant argues that it was error for the district court to exclude evidence about his relationship with his first wife. We conclude that appellant's relationship with his first wife has little bearing on whether or not he abused his second wife. The decision to exclude this evidence was not an abuse of discretion.

Appellant also challenges the district court's exclusion of testimony regarding alleged abuse committed against him by respondent. But the record shows that respondent was allowed to testify about these allegations. He testified that respondent threatened to kill him with a knife and twice attempted to do so. The district court only limited his testimony when appellant tried to identify witnesses to these events and when appellant sought to go back to the testimony on the second day of the hearing and discuss it further. It was not an abuse of discretion for the district court to exclude this testimony. Appellant did not file a cross-petition alleging that he was the victim of domestic abuse committed by his wife, nor did appellant claim that he was acting in self-defense. Instead, he denied all of the allegations in the OFP petition. The district court's exclusion of this testimony was not a clear abuse of discretion.

Appellant also claims that it was error for the district court to prohibit his alleged girlfriend from testifying to deny an affair. We conclude that it was not an abuse of discretion for the district court to exclude this testimony. Respondent testified that the domestic abuse would often occur when she confronted her husband about having a

girlfriend. Whether or not this woman was actually appellant's girlfriend does not tend to prove or disprove the allegations in the petition.

Appellant argues that the district court erred by not allowing testimony regarding respondent's relationship with his daughter. Appellant was able to testify about the relationship and had the opportunity to cross-examine respondent. Appellant testified that he believed respondent did not like his daughter, did not like that she was from his prior marriage, and that she wanted to return to Laos because of it. The district court sustained a relevance objection when appellant was asked how respondent treated his daughter. On the second day of the hearing, the district court sustained another objection when appellant was asked how respondent got along with his daughter. The district court also did not allow appellant's mother to testify. Appellant's theory of the case was that respondent was not abused, but rather wanted out of the marriage and therefore sought the OFP in order to remain in the United States once her marriage had ended. Appellant argues that this testimony was relevant to provide context for determining whether the domestic abuse occurred. However, even if evidence of friction between respondent and the daughter was arguably relevant to disprove the allegations in the OFP, we find that appellant has not been prejudiced by this error. The district court specifically found respondent's testimony about the abuse to be credible. Appellant was allowed to testify about the relationship between his daughter and respondent, to give his opinion that respondent wanted to return to Laos, and to cross-examine respondent on the subject. Additional evidence on these same issues would not have altered the result. The district

court's decision to exclude evidence regarding respondent's relationship with appellant's daughter did not prejudice appellant and any error was harmless.

Appellant also argues that it was error for the district court to prevent his daughter from testifying. The district court stated that it was her policy to not have children testify, particularly one that was only nine years old. Appellant did not make an offer of proof for the daughter's testimony, but argues on appeal that "she is believed to have witnessed her father being menaced with a knife by [respondent]." But evidence of respondent's alleged threats against her husband was not relevant to the issue before the district court. There were no allegations of domestic abuse against the daughter, and her testimony would be of little value. It was not an abuse of discretion for the district court to refuse to allow appellant's daughter to testify.

Finally, appellant challenges the district court's exclusion of the sworn statement by Long Vang. Mr. Vang was out of the country and executed a sworn document at the United States Embassy in Laos stating that respondent had been violent towards appellant. The referee excluded this document as hearsay. Appellant concedes on appeal that this was hearsay, but argues that the statement should have been admitted under Minn. R. Evid. 804(b)(3) as a statement against interest. We disagree. The document does not conform to the statement-against-interest rule because it was not contrary to any interest of Mr. Vang's at the time it was made. *See* Minn. R. Evid. 804(b)(3) (requiring the statement to be "so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability . . . that a reasonable person in the declarant's position would not have made the statement unless believing it

to be true”). Therefore, we find that the district court did not abuse its discretion in excluding this evidence.

Affirmed.