DA 19-0386

IN THE SUPREME COURT OF THE STATE OF MONTANA

2020 MT 31N

JAIME MICHELLE KOHNKE,

Petitioner and Appellee,

v.

MATTHEW MICHAEL DEBO,

Respondent and Appellant.

APPEAL FROM: District Court of the Sixth Judicial District,
In and For the County of Park, Cause No. DR-19-51
Honorable Brenda R. Gilbert, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Eric T. Oden, Karl Knuchel, Karl Knuchel PC, Livingston, Montana

For Appellee:

Jaime Michelle Kohnke, Self-Represented, Mammoth, Wyoming

Submitted on Briefs: January 2, 2020

Decided: February 4, 2020

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Following a hearing on June 3, 2019, the Sixth Judicial District Court, Park County, issued an Order of Protection for self-represented Petitioner Jaime Michelle Kohnke (Kohnke) and her adult son. Through counsel, Matthew Michael Debo (Debo) appeals this Order. Kohnke represents herself in this appeal.

¶3 This case arises from a short-term, intimate relationship between Kohnke and Debo. They dated on and off for about six months. The relationship seemed to sour after they both went on vacation to meet Kohnke's parents. When Kohnke chose to end the relationship with Debo, Kohnke explains Debo continued contact through various means: text messages, emails, and other digital access platforms. Kohnke, over several months in early 2019, repeatedly relayed to Debo that he leave her alone, give her some space, and stop all contact. In March 2019, she contacted a Park County Deputy so that law enforcement could verbally warn Debo not to contact her. In doing so, Kohnke hoped to avoid having to pursue in court an order of protection. Kohnke wanted to leave the area for a visit with her parents.

¶4 While in Arizona, Kohnke learned that Debo had found out where she was even though she did not tell him when and where she was going. Kohnke did not want to

encounter Debo at her parents' home, and on April 18, 2019, Kohnke obtained an Order of Protection against Debo in the Arrowhead Justice Court, Maricopa County, Arizona. She gave as her address on the petition the residence hall in Gardiner, Montana, even though she was a seasonal employee. Debo was served a copy of the Order of Protection via his post office box on April 24, 2019. A week later, Debo filed a document with the Arrowhead Justice Court to appeal the Order of Protection and the Justice Court set a hearing for May 20, 2019, allowing the parties to appear by telephone.

¶5 Meanwhile, Kohnke had returned to Montana in early May. On May 20, 2019, which coincidentally was the same day as the hearing scheduled in Arizona, Kohnke petitioned the Park County District Court for a temporary order of protection and attached a copy of the Order of Protection from the Arrowhead Justice Court. The District Court issued a temporary ex parte order of protection and set the matter for a hearing on June 3, 2019. The District Court issued an Order of Protection which expires on June 3, 2021.

¶6 This Court reviews a district court's findings of fact and conclusions of law under different standards. We typically do not overturn a district court's decision concerning an order of protection unless the court abused its discretion. "A finding is clearly erroneous if it is not supported by substantial evidence, if the trial court misapprehended the effect of the evidence, or if our review of the record convinces us that a mistake has been committed." *Jordan v. Kalin*, 2011 MT 142, ¶ 19, 361 Mont. 50, 256 P.3d 909 (citation omitted). We review a court's conclusions of law for correctness. *Jordan*, ¶ 19. "If clear error is not apparent, we will uphold the decision below unless the court abused

its discretion." *Bock v. Smith*, 2005 MT 40, ¶ 14, 326 Mont. 123, 107 P.3d 488 (citations omitted). We "will affirm the district court when it reaches the right result, even if it reaches the right result for the wrong reason." *State v. Betterman*, 2015 MT 39, ¶ 11, 378 Mont. 182, 342 P.3d 971 (citation omitted).

¶7 Debo argues that the District Court abused its discretion when it issued the Order of Protection. First, Debo challenges the sufficiency of the evidence, contending that the District Court was not presented with substantial evidence to establish that a reasonable person in Kohnke's position would be in fear of her safety. Debo next posits that the District Court erred when it added Kohnke's adult son to the Order of Protection. Debo argues that Kohnke's son had no knowledge of the Order of Protection and did not consent to being a protected person. Debo further argues that the court erred because there is no specific statutory authority to include Kohnke's son in the Order of Protection.

¶8 Upon review of the record, this Court concludes that the District Court, although not for the reason it gave, did not abuse its discretion when it issued the Order of Protection for Kohnke. Further, the court's findings are supported by substantial evidence. *Jordan*, ¶ 19. During the hearing, both parties testified. Kohnke testified and admitted exhibits, illustrating her many attempts to convey to Debo she wanted to be left alone. She testified that she blocked Debo from her phone and her email. She also testified that she never received notification of the May hearing in Arizona. Kohnke explained to the District Court that the Arrowhead Justice Court did not want her to use her post office box in Gardiner, Montana, as a mailing address and insisted that Kohnke's physical residence was necessary even though Kohnke explained she lived in a residence hall where residents do

not receive mail. When questioned by the District Court whether Kohnke felt in reasonable apprehension of physical harm, Kohnke did not answer directly, stating that she was not certain. However, Kohnke testified she was worried about her own safety because she does not have family in Montana or a lot of friends. Kohnke explained to the District Court that Debo "broke[] the order, already, within the first day I was back [in Montana], from the order of protection I had to start [in Arizona]." The court asked about Debo's conduct and violations of the Arizona Order of Protection. Kohnke testified that Debo's contact with her all occurred before the Arizona Order was dismissed and that once he was arrested Debo stopped trying to contact her.

¶9 Debo testified that there is no future to the relationship between him and Kohnke. He noted that he is trying to move on. When questioned by his counsel about this, the following exchange occurred:

> Q: So, if the [c]ourt does not grant a permanent order of protection, and I know there are ongoing criminal charges, as well, but disregarding those, will you continue contacting Ms. Kohnke?
> A: No, I will not, and I can't contact her, because she blocked me. So, I can't contact her, nor will I.

Debo further testified that he has no history of violence, but agreed he had been warned by Kohnke that she would obtain an order of protection unless Debo changed his behavior.

¶10 The District Court acknowledged that Debo stated he was ready to move on and to accept the relationship was over. However, Debo's actions, as little as two weeks prior to the hearing, demonstrated otherwise. The District Court concluded "that the whole picture . . . would cause any reasonable person fear of harm." While the District Court was

correct in issuing an Order of Protection, it did so on the basis that Kohnke demonstrated she was in reasonable apprehension of bodily injury. Based on Kohnke's testimony that she was "not certain" she was apprehensive about Debo physically harming her, we conclude this was not a proper basis upon which to issue the order. However, the District Court did not err in issuing the Order of Protection.

¶11 Pursuant to § 40-15-201, MCA, a petitioner may seek an order of protection by filing a sworn petition stating, "the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in 40-15-102." Section 40-15-102(2), MCA, provides that an individual may file a petition for an order of protection against the offender regardless of the individual's relationship to the offender if the petitioner is a victim of stalking as defined in § 45-5-220, MCA. Pursuant to § 45-5-220(1), MCA, "[a] person commits the offense of stalking if the person purposely or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person to" fear for his or her own safety or "suffer other substantial emotional distress."[1] Under the stalking statute, a "course of conduct" is defined as "two or more acts, including but not limited to acts in which the offender directly or indirectly, by any action, method, communication, or physical or electronic devices or means, follows, monitors, observes, surveils, threatens, harasses, or intimidates a person or interferes with a person's property." Section 45-5-220(2)(a), MCA. In addition, "[a]ttempts by the accused person to contact or follow the stalked person after the accused

[1] The amendment of § 45-5-220(2), MCA, was effective May 2, 2019. 2019 Mont. Laws ch. 255, § 2.

person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person." Section 45-5-220(7), MCA. The record clearly supports Debo purposely or knowingly caused Kohkne substantial emotional distress by repeatedly harassing her through text messages, emails, and other digital access platforms such that issuance of the Order of Protection based on Debo's stalking of Kohnke was appropriate. Based on the record, the District Court reached the right result, albeit for the wrong reason.

¶12 Finally, the District Court erred in its conclusion that Kohnke's adult son, who was in the military and soon to be deployed abroad, should be included as a protected person in the Order of Protection. While the definition of a family member is broad, Kohnke's adult son should not have been included as a protected person in the Order of Protection. While a family member includes children and other enumerated relationships, "regardless of the ages of the parties and whether the parties reside in the same household . . .[,]" § 45-5-206(2)(a), MCA, an order of protection may restrain "the respondent" only from "any other named family member who is a minor." Section 40-15-204(4), MCA. Kohnke's son is an adult and could not be included in the Order of Protection because he did not petition to be included and he is not a minor. The District Court erred when it included Kohnke's son as a protected person. We remand for the limited purpose of having Kohnke's adult son stricken from the Order of Protection.

¶13 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent

¶14 Affirmed in part and remanded to remove Kohnke's adult son from the Order of Protection.

/S/ LAURIE McKINNON

We concur:

/S/ JIM RICE
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ JAMES JEREMIAH SHEA