NOT DESIGNATED FOR PUBLICATION

No. 107,425

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

KRISTIE MARIE KREGER,
Appellee,

v.

LEON DWIGHT KREGER, JR.,
Appellant.

MEMORANDUM OPINION

Appeal from Johnson District Court; NEIL B. FOTH, judge. Opinion filed November 16, 2012. Affirmed.

J. Scott Koksal, of Lindner & Marquez, of Garden City, for appellant.

Marc H. Berry, of Olathe Legal Clinic, LLC, of Olathe, for appellee.

Before ATCHESON, P.J., BUSER and STANDRIDGE, JJ.

Per Curiam: Defendant Leon Dwight Kreger, Jr., appeals an order the Johnson County District Court entered against him and in favor of his wife Kristie Marie Kreger under the Protection from Abuse Act, K.S.A. 60-3101 *et seq.*, arguing that venue was improper and the evidence failed to support the decision. Neither challenge has merit, so we affirm the district court.

At the time the district court entered the order on December 14, 2011, Leon and Kristie were married but in the process of divorcing. We refer to the parties by their first names to distinguish between them and not in some misplaced effort to seem informal.

Leon and Kristie have two children who were then about 10 and 6 years old. For years, they lived in Dodge City. Leon suffered a severe closed-head injury in a motor vehicle accident. As a result, he often has been heavily medicated and must travel out of state, frequently to Chicago, for treatment.

The papers filed in connection with the request for a PFA order indicated Leon is a physically imposing individual. Following the head injury, he experiences marked mood swings and fits of rage. Although Leon never acted violently toward Kristie or their children, he has sometimes broken furniture and damaged other property during his outbursts. Kristie asserted that Leon occasionally has memory lapses, seizures, and muscle tremors. Leon disputed that assertion.

In September 2011, the couple discussed divorcing. According to Kristie, Leon initiated the idea, and she did not discourage him because their relationship had become difficult. Leon said he asked for the divorce because he caught Kristie having sexual relations with Tom Johnson. Johnson provided significant testimony in support of Kristie's request for a PFA order and denied having a sexual relationship with her. At the end of September, while Leon was in Chicago for medical care, Kristie moved from their home in Dodge City to a residence in Spring Hill in Johnson County. Kristie took the children with her, along with a significant amount of personal property. The record indicates Kristie did not inform Leon of her intention to move beforehand.

After returning home on September 30 and finding Kristie and the children gone, Leon immediately filed for divorce in Ford County District Court. The Ford County District Court entered temporary orders that, among other things, granted custody of the children to Leon. At the PFA hearing, Johnson testified that Leon called him repeatedly between September 30 and October 3 to make threats that he would kill Johnson and then Kristie and the children. Johnson and Kristie filed a police report. At the evidentiary

hearing, Leon denied threatening anyone and said he had called Johnson to get Kristie to return a garage door opener.

On October 3, 2011, Kristie filed a petition for a PFA order in Johnson County. The petition outlined Leon's history of outbursts and psychological instability following his head injury. The petition also detailed the threats Johnson reported. In conformity with K.S.A. 60-3102(a)(2), defining abuse for purposes of the Act, Kristie alleged that she was in "fear of imminent bodily injury" because of Leon's conduct. She testified to that fear during the evidentiary hearing. Leon responded to the petition and, through his lawyer, suggested Kristie sought relief under the Act as a way of getting around the temporary child custody arrangements put in place in the divorce action.

At the hearing, Johnson recounted the telephone calls from Leon and testified that Leon had tried to run him off the road on the way to the courthouse that day. But Leon called Cheryl Kreger, his aunt, as a witness. Cheryl testified that she rode with Leon to the courthouse, a third person had driven them, and nobody tried to run Johnson off the road. Michelle Peterson, who worked as a caregiver for Leon for a long time and had known the family for about 5 years, testified that Leon had become quite short tempered following his injury. According to Peterson, he would frequently yell and scream with little or no provocation. But she said Leon never acted violently toward Kristie or the children. Peterson testified the children wanted to see their father, although she believed they were uneasy or scared around him.

Kristie offered no evidence that Leon ever directly communicated to her a threat he intended to physically harm her or the children.

At the conclusion of the hearing, the Johnson County District Court issued a PFA order directing that Leon have no contact with Kristie, the children remain with Kristie, and Leon have limited and supervised parenting time with the children in Olathe. As

provided in K.S.A. 2011 Supp. 60-3107, the custody provisions of the PFA superseded the temporary orders entered in the Ford County divorce action. The PFA order remains in effect through December 14, 2012, and Kristie may request that it be extended for another year. Leon has timely appealed the entry of the PFA order.

For his first point on appeal, Leon contends the Johnson County District Court lacked venue to hear Kristie's PFA petition. Citing the general venue provisions in Article 6 of the Kansas Code of Civil Procedure, particularly K.S.A. 60-603, Leon argues Kristie should have filed her PFA petition in Ford County and, therefore, the Johnson County District Court should have either dismissed the petition or transferred it to Ford County. See K.S.A. 60-611.

The argument is legally unfounded. The Act contains a specific provision conferring jurisdiction, and hence venue, on "any district court." K.S.A. 60-3103. The provision also states that a person's right to relief under the Act "shall not be affected by the person's leaving the residence or household to avoid further abuse." K.S.A. 60-3103. In addition, in the introductory section of the Act, the legislature expressly declares the statutory scheme must be "liberally construed to promote the protection of victims . . . from threats of bodily injury and to facilitate access to judicial protection for the victims." K.S.A. 60-3101(b).

Those sections of the PFA unequivocally conferred authority on the Johnson County District Court to hear Kristie's petition and to enter a PFA order against Leon.

Leon next argues that the evidence failed to support the Johnson County District Court's decision to issue the PFA order. In reviewing a sufficiency challenge, an appellate court affords singular deference to the district court's factual findings and will not disturb them if they have a basis in the record. The appellate court does not reweigh evidence and leaves intact credibility determinations. See *Progressive Products, Inc. v. Swartz*, 292

Kan. 947, 955, 258 P.3d 969 (2011); *Hodges v. Johnson*, 288 Kan. 56, Syl. ¶ 7, 199 P.3d 1251 (2009) (An appellate court reviews a trial judge's findings of fact only to determine if they are supported by competent evidence and will not make credibility determinations or reweigh conflicting evidence.). In light of those standards, the appellate court then asks whether the district court's factual findings provide a sufficient legal basis to warrant the resulting order or judgment. That is a question of law subject to unlimited review on appeal. See *Progressive Products, Inc.*, 292 Kan. at 955; *Owen Lumber Co. v. Chartrand*, 283 Kan. 911, 915-16, 157 P.3d 1109 (2007).

The Johnson County District Court's ruling from the bench granting the PFA order is not a model of precision, particularly in setting out factual findings, including credibility determinations. Nonetheless, it is sufficiently clear that we may extract the essential findings.

A district court may enter a PFA order if the petitioner proves by a preponderance of evidence that he or she has been abused by "an intimate partner" or a household member. See K.S.A. 2011 Supp. 60-3104(a) (outlining grounds for relief under the Act). As we have noted, "abuse" is statutorily defined to include a "physical threat" intended to place the petitioner or "another in fear of imminent bodily injury." K.S.A. 60-3102. Everybody agreed Leon and Kristie, as a married couple, were covered by the Act.

The district court found Kristie "actually was in fear . . . of harm" from Leon after she had moved to Spring Hill. That is a factual finding. It has support in the evidence. Following his head injury, Leon had become volatile with explosive episodes of anger. During those episodes, he raged verbally and physically—breaking furniture and damaging other property. Given the circumstances of her sudden and unannounced departure from the Ford County home with the couple's children, Kristie reasonably might conclude Leon would then direct his anger at her. We need not decide whether that

sort of conclusion alone would support a PFA order. The point could be argued either way and would present a challenging issue.

The Johnson County District Court credited Johnson's testimony that Leon had threatened to kill him, Kristie, and the children in at least one telephone call in late September or early October. The district court acknowledged that Johnson did not emerge from the hearing with his credibility unscathed, seemingly a reference to the allegation that Leon had attempted to run him off the road. The district court, however, concluded that Leon "may have a good faith belief that he did not make these phone call [*sic*] or make these threats, but he might not actually remember that he did." In so ruling, the district court found that Leon had communicated threats to Johnson that he would kill Kristie and the children. We have neither a legal basis nor a persisting urge to disturb that conclusion.

The district court saw Johnson testify on direct and cross-examination. From that vantage point, the district court was uniquely situated to assess the credit to be given Johnson's testimony. The judicial process treats an appearance on the witness stand, with the taking of an oath and the rigor of cross-examination, as perhaps the most discerning crucible for separating honesty and accuracy from mendacity and misstatement. *State v. Scaife*, 286 Kan. 614, 624, 186 P.3d 755 (2008) ("[T]he ability to observe the declarant is an important factor in determining whether he or she is being truthful."). A fact-finder may choose to credit some parts of a witness' testimony while discounting other parts, as the district court did with Johnson.

Given those factual findings, this court must determine if that evidence legally justified the PFA order. In short, it did. Leon communicated to Johnson, rather than to Kristie, a direct threat of bodily harm. But Leon had every reason to believe that Johnson would inform Kristie of what he had said, especially given his perception of the relationship between Johnson and Kristie. And the evidence showed that Johnson did

inform Kristie of Leon's declaration. We believe that constitutes a threat under the Act and is consistent with a liberal construction of the statutory language to carry out the purposes of the Act.

Leon argues that the threat, as portrayed in the evidence the district court credited, could not have caused Kristie to have an *imminent* fear of bodily injury and, therefore, would not qualify as abuse under the Act. The district court voiced some concern along that line in its bench ruling but never really addressed the legal point. The common definition of "imminent" refers to something "ready to take place." Merriam-Webster's Collegiate Dictionary 621 (11th ed. 2003). The Kansas appellate courts have embraced that meaning in other contexts. See *State v. Hundley*, 236 Kan. 461, 466, 693 P.2d 475 (1985) (discussing material difference between "immediate" and "imminent" when instructing jury on self-defense). The *Hundley* court recognized that "imminent" refers to a broader, more flexible time frame than does "immediate." 236 Kan. at 466.

Leon suggests any bodily injury Kristie might have feared could not have been "imminent" because he lived in Dodge City and she had moved to Spring Hill when he communicated with Johnson. We take notice that the two communities are separated by over 300 miles and the drive between them would take in excess of 5 hours. But that length of time does not fall outside the realm of "imminent" as a matter of law, particularly given the remedial purposes of the Act and the explicit legislative direction for liberal construction. Leon also argues that he no longer drives because of his head injury. It is unclear whether he simply chooses not to do so or is, in fact, physically incapable of operating a motor vehicle. Either way, however, there are other means of getting from Dodge City to Spring Hill.

More broadly, we doubt the legislature intended to immunize threats of bodily harm a husband might make to his estranged wife simply because they live in different locales or because some other circumstance might delay execution of the threat for

several hours. A midnight telephone call from one separated spouse threatening to kill the other when the sun comes up ought to fit within the Act. Leon has not presented a persuasive argument the statutory language can or should be construed otherwise. Based on the Johnson County District Court's factual findings, the circumstances established abuse of the sort covered under the Act and legally justified issuance of a PFA order.

Affirmed.