NOT DESIGNATED FOR PUBLICATION

No. 119,770

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

AMY L. RISLEY,
on Behalf of JOSEPH RISLEY, a minor child,
Appellee,

v.

JEFFREY H. RISLEY,
Appellant.

MEMORANDUM OPINION

Appeal from Douglas District Court; BRANDEN SMITH, judge pro tem. Opinion filed September 20, 2019. Affirmed.

Jody M. Meyer, of Lawrence, for appellant.

No appearance by appellee.

Before POWELL, P.J., GARDNER, J., and LAHEY, S.J.

POWELL, J.: Amy L. Risley sought a protection from abuse (PFA) order on behalf of her minor son, Joseph Risley (Joe), against Jeffrey H. Risley (Jeff), her ex-husband and Joe's father, after a skirmish between Joe and Jeff. The district court granted Amy's request and entered a PFA order. Jeff appeals, claiming insufficient evidence supports the order. After a careful review of the record and Jeff's arguments, we find no reversible error by the district court and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The following facts were brought to light at a one-day trial on Amy's petition for a PFA order on behalf of Joe against Jeff.

Amy and Jeff are the parents of three minor children, one of whom is Joe. Joe was adopted from Guatemala when he was 11 months old. Amy and Jeff divorced in May 2011 when Joe was 9 years old. At the time of the incident that led to the PFA order, Joe was 15 years old.

When Joe was 2 or 3 years old, Amy and Jeff noticed he became more defiant than typical toddler behavior. This defiant behavior accelerated when Joe started seventh grade. He began showing signs of depression, engaging in self-harm, and did not react normally to discipline. His emotional stress was usually related to social situations at school.

When Joe was in seventh grade, his parents put him in therapy due to his accelerating defiant behavior. He saw this therapist for approximately a year before that therapist recommended more advanced therapy.

Midway through his eighth grade year, Joe was expelled from school. After this expulsion, Joe became severely depressed and was hospitalized multiple times for self-harming behavior and threats of suicide. In February 2015, Joe went to live with Jeff for 30 days because Amy needed help getting Joe back on his feet after his expulsion.

In the spring of 2015, at the recommendation of his prior counselor, Joe did an intake evaluation at Bert Nash. The results of this intake evaluation qualified Joe for intensive SED (severely emotionally disturbed) services. This therapy assisted both Joe and his parents with practice skills where needed.

Tamara Henley, Joe's counselor at Bert Nash, testified that she was working to resolve conflict and discord between all family members. According to Tamara, Joe does not like authority and does not like to follow rules. When confronted about this behavior, his reaction can range from being defensive, to verbally aggressive, to shutting down, or to engaging appropriately to what happened. Tamara also testified that Joe is very empathetic and is easily drawn into emotional situations because of his desire to help others but then has difficulty withdrawing from the situation. She encouraged Jeff to be more positive and "softer" when dealing with Joe's explosive behavior.

Both Amy and Jeff characterized Joe's behavior as sometimes explosive because he occasionally goes into violent rages by screaming and yelling when he is disciplined. Telling Joe "no" can trigger or set off such behavior. Both parents have had difficulty handling Joe's explosive behavior. Nevertheless, Amy testified she is not concerned for her safety around Joe because his behavior has never resulted in physical violence, nor has she witnessed him being physically threatening to anyone. At times when Joe was feeling suicidal he would scream, cause damage to the residence, and/or threaten suicide. This behavior often resulted in Amy or Jeff calling the police because of the suicide threats. Since 2016, Joe has been taken to the emergency room several times because of his mental health issues. Joe has never touched or physically harmed his parents or anyone else. Typically, when Joe is having an outburst he walks away or he internalizes, and his destruction of property, such as punching a wall, is "where it ends."

Amy characterized Jeff's handling of Joe as very harsh and antagonistic. Jeff denied that he handles things by being violent and physically aggressive.

Joe's counselor advised Amy and Jeff that when Joe is triggered and starts to explode, it is best for them to walk away and not continue to yell at him so his behavior does not escalate and allow Joe to calm down. Jeff believes the best method for dealing

with Joe's behavior is to stay calm. Sometimes when Joe is yelling and cursing at Jeff, Jeff will leave the room to give Joe space to calm down.

Joe started his freshman year of high school, and he routinely skipped class. As a result, he was failing in school. Joe also started having issues with substance abuse around this time.

In April 2017, Joe and Jeff had a verbal altercation that stemmed from Joe lying about doing homework at school after classes when he really was not doing homework. On the way to a restaurant Jeff confronted Joe about lying about doing his homework and skipping class. When they arrived at the restaurant, Joe became defiant by ordering extra food that Jeff thought Joe would not eat. Jeff spoke with Joe about ordering the extra food, asked him if he really needed it, and continued to discuss Joe's issues at school. Joe began yelling and cursing at Jeff, and Jeff reacted by yelling and cursing back at Joe. Joe screamed back at Jeff and walked out of the restaurant. Jeff testified that he yelled and cursed back at Joe "to try and play his own game to get him to stop."

With this background in mind, we now turn to the evening of May 11, 2017. Joe was upset about a social interaction from school. He had been upset about some girl drama for a couple of days. Joe was at Jeff's house that night. Jeff asked Joe about the issues, but Joe indicated he did not want to talk.

Joe's friend of a year-and-a-half N.M. contacted Joe that same evening to see how he was doing and asked if she could come over. Joe and N.M. were at some point romantically involved but not at the time of this incident. N.M. drove over to Jeff's house to see Joe. Joe did not ask Jeff if N.M. could come over, but Joe told N.M. that he had gotten his father's permission. When she arrived Joe went outside to N.M.'s car and got in the front passenger seat.

Jeff noticed that Joe went outside and got in a car that he did not recognize, so he went outside to find out who had arrived at the house. Jeff noticed that it was N.M. and went back inside. A little while later, as Joe's "lights out" time approached, Jeff went outside and told Joe to come inside. Joe ignored Jeff, and Jeff again went inside. Joe said that Jeff appeared to be a little angry; however, Jeff testified he was not angry.

Jeff went outside again about 20 minutes later, opened the car door, and told Joe to come inside. At first, Joe did not want to go inside, but he did so because he knew Jeff would become angrier. Joe went inside the house and went downstairs, and he was upset. Jeff followed Joe downstairs because he could hear Joe getting a little huffy. Joe started escalating, and Jeff said he was flustered in the basement because Joe was yelling at him. Jeff told Joe to calm down and tried to explain why Joe needed to come inside, but Joe became more explosive. Jeff told Joe they would talk about the situation when Joe was calm, and Jeff went upstairs.

Once Jeff returned upstairs, he noticed N.M. was still outside. Unbeknownst to Jeff and Joe, N.M.'s car would not start because the battery had drained from the headlights being left on while she and Joe were sitting in the car and talking. Jeff went outside to help N.M. get her car started and went into the garage looking for jumper cables. A few moments later, Joe came outside through the front door. He was yelling at Jeff that he could make his own decisions. Joe went towards Jeff while they both argued. Jeff was facing away from Joe at the time. Joe said, "I've fucking had it," and he tensed up, clenching his fists. Jeff testified that Joe bumped into him, but Joe denied this in his testimony. Jeff turned around and grabbed Joe by the neck, choked him, dragged him about 7 feet across the driveway, threw him down on the grass, and walked away. Joe could not breathe for a few seconds after Jeff threw him to the ground.

Joe got up and started moving towards Jeff. N.M. saw this, got out of her car, and went to hold Joe back. According to Joe and N.M., Jeff punched Joe in the face. As a

result, both Joe and N.M. went to the ground. Joe got up and went towards Jeff again. As Joe moved towards Jeff, Jeff swung his fist at Joe and hit him again. Joe went to the ground for a third time. Jeff testified that he never hit Joe but did admit to grabbing Joe by the neck because that was the first thing he could get hold of and throwing him in the grass because he was fearful that Joe was going to attack him.

Jeff called the police. Joe got up and ran inside. N.M. later went inside and found Joe in Jeff's room with a knife held to his own neck. Joe told N.M. he wanted to end it and he was tired of "all the things his dad has been causing towards him and all the problems," including the current situation. Joe's sister entered the room, and both she and N.M. were able to convince Joe to give them the knife. After the police arrived they took Joe to the hospital because he had threatened suicide. Amy took him to her home shortly after.

On May 15, 2017, Amy filed a petition for a PFA order against Jeff on behalf of Joe. The district court issued a temporary PFA order and set the case for trial. After a continuance, a one-day trial was held on August 30, 2017, after which the district court took the matter under advisement. On October 23, 2017, the district court issued a written memorandum opinion that held Jeff's acts went beyond parental discipline and granted a permanent PFA order. The order was filed October 24, 2017.

After the district court issued its order, Jeff filed a motion for additional findings and a motion to alter or amend the judgment. Specifically, Jeff requested the district court make additional findings (1) regarding the use of self-defense rather than the single analysis of parental discipline; (2) that Joe told the therapist about the incident in question but only stated that that he was grabbed by his neck and never advised his therapist that Jeff hit him; and (3) that even if the evidence was credible that Joe was struck, no evidence was presented that Joe was injured in any fashion.

The district court denied Jeff's motion, stating:

> "The Court's findings set forth in its *Memorandum Decision* are sufficient to resolve the issues. Additionally, the findings are adequate to advise the parties, as well as an appellate court, of the reasons for the Court's decision and the standards the Court applied which governed its determination and persuaded it to arrive at the decision."

Jeff timely appeals.

Analysis

On appeal, Jeff raises three arguments. First, he argues the district court erred in denying his motion for additional findings of fact. Second, Jeff argues the district court erred in allowing the PFA order to expire on October 23, 2018, rather than on May 15, 2018. Third, Jeff argues that the PFA order was not supported by substantial competent evidence.

I. IS THIS CASE MOOT?

Because the PFA order expired on October 23, 2018, we ordered Jeff to show cause as to why this case should not be dismissed as moot. Appellate courts generally do not decide moot questions or render advisory opinions. *Board of Johnson County Comm'rs v. Duffy*, 259 Kan. 500, Syl. ¶ 1, 912 P.2d 716 (1996). "An issue is moot where any judgment of the court would not affect the outcome of the parties' controversy." *Manly v. City of Shawnee*, 287 Kan. 63, Syl. ¶ 4, 194 P.3d 1 (2008). Stated another way, the mootness test has been described as a determination whether "it is clearly and convincingly shown the actual controversy has ended, the only judgment that could be entered would be ineffectual for any purpose, and it would not impact any of the parties' rights." *Wiechman v. Huddleston*, 304 Kan. 80, 84, 370 P.3d 1194 (2016). A justiciable

controversy has "definite and concrete issues between parties with adverse legal interests that are immediate, real, and amenable to conclusive relief." *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 890-91, 179 P.3d 366 (2008).

However, mootness is not a question of jurisdiction, and there are exceptions to the mootness doctrine. *State v. Montgomery*, 295 Kan. 837, Syl. ¶ 2, 286 P.3d 866 (2012). One such exception is that "the court will proceed to judgment whenever dismissal of an appeal adversely affects rights vital to the parties, even where its judgment will not be enforceable because of lapse of time or other changed circumstances. [Citations omitted.]" *Gonzales v. State*, 11 Kan. App. 2d 70, 71, 713 P.2d 489 (1986).

Another panel of this court addressed a similar factual scenario in *Skillett v. Sierra*, 30 Kan. App. 2d 1041, 53 P.3d 1234, *rev. denied* 275 Kan. 965 (2002). In *Skillett*, the PFA order protecting a minor child from her father expired while the appeal was pending. Arguing against mootness, Skillett asserted that the doctrine was not applicable because his vital right to the possession of a firearm under federal and Kansas law was impacted by the PFA order. The *Skillett* panel disagreed with this argument because Skillett's rights to possess a firearm were reinstated after the expiration of the PFA order. 30 Kan. App. 2d at 1047.

Here, Jeff argues that his vital right to parent his children is possibly implicated by the PFA order because the couple has two other minor children together and this PFA could be used against him in a future proceeding dealing with his custody and parenting time of those children. We are persuaded by this argument because "[a] father has a constitutional right to parent his child." *In re J.L.*, 57 Kan. App. 2d ___, ___, ___ P.3d ___, 2019 WL 3242276, at *1 (No. 120,504, filed July 19, 2019). As the PFA order, whether current or expired, could possibly impact his vital right to parent his children in the future, we will consider the merits of Jeff's appeal. See K.S.A. 2018 Supp. 23-

3203(a)(9) (evidence of domestic abuse to be considered in determining legal custody, residency, and parenting time of child).

II. DID THE DISTRICT COURT ERR IN DENYING JEFF'S MOTION FOR ADDITIONAL FINDINGS OF FACT?

Jeff argues that the district court erred in denying his motion for additional findings of fact. Below, Jeff moved for additional findings pursuant to K.S.A. 2018 Supp. 60-252(b). Specifically, Jeff requested the district court make additional findings (1) regarding the use of self-defense rather than the single analysis of parental discipline; (2) that Joe told the therapist about the incident in question but only stated that that he was grabbed by his neck and never advised his therapist that Jeff hit him; and (3) that even if the evidence was credible that Joe was struck, no evidence was presented that he was injured in any fashion.

Research has not revealed any Kansas authority that explicitly enumerates a standard of review for the denial of a motion for additional findings of fact.

Under K.S.A. 2018 Supp. 60-252(b): "On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings, or make additional findings, and may amend the judgment accordingly. The motion may accompany a motion for a new trial under K.S.A. 60-259, and amendments thereto." Such a request, while notably different, is akin to requesting the court to alter or amend its judgment because the movant is asking the district court to make additions to its already issued decision. See K.S.A. 2018 Supp. 60-259(f) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of judgment."). The denial of a motion to alter or amend is reviewed for an abuse of discretion. *Exploration Place, Inc. v. Midwest Drywall Co.*, 277 Kan. 898, 900, 89 P.3d 536 (2004). Logic dictates that the same

standard of review should be applied when an appellate court reviews the denial of a motion for additional findings of fact.

A judicial action constitutes an abuse of discretion if (1) no reasonable person would take the view adopted by the trial court; (2) it is based on an error of law; or (3) it is based on an error of fact. *Wiles v. American Family Life Assurance Co.*, 302 Kan. 66, 74, 350 P.3d 1071 (2015). "The party asserting an abuse of discretion bears the burden of showing such an abuse of discretion." *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106, *cert. denied* 571 U.S. 826 (2013). To the extent resolution of this argument requires interpretation of a statute, this panel's review is de novo. *Neighbor v. Westar Energy, Inc.*, 301 Kan. 916, 918, 349 P.3d 469 (2015).

The district court denied Jeff's motion, stating that the findings in the memorandum opinion were sufficient to resolve the issues and were adequate to advise the parties, as well as an appellate court, of the reasons for its decision and the standards it applied to arrive at the decision.

K.S.A. 2018 Supp. 60-252(a), in part, requires:

> "In an action tried on the facts without a jury or with an advisory jury or upon entering summary judgment, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of evidence, or may appear in an opinion or a memorandum of decision filed by the court."

In *Andrews v. Board of County Commissioners*, 207 Kan. 548, 555, 485 P.2d 1260 (1971), the Kansas Supreme Court held K.S.A. 60-252(a) requires that findings

> "should be sufficient to resolve the issues, and in addition they should be adequate to advise the parties, as well as the appellate court, of the reasons for the decision and the

> standards applied by the court which governed its determination and persuaded it to arrive at the decision. These requirements are apparent in the statute itself."

The problem here is that Jeff essentially asked the district court to make findings of fact contrary to its assessment of the evidence. K.S.A. 2018 Supp. 60-252(a) does not require the district court to make such findings. Our review of the record reveals that the district court's findings of fact were sufficient to apprise us of the reasons for its decision and were sufficient to permit meaningful appellate review. The district court specifically enumerated 44 findings of fact and separately made conclusions of law based on those facts. Jeff's disagreement with the district court's findings of fact does not compel the court to make additional findings. See *Mendenhall v. Casner*, 121 Kan. 745, 748, 250 P. 328 (1926) ("[T]hese requested findings were evidentiary in their nature, were contrary to the evidence believed by the court, the nature and substance of which evidence is disclosed by the findings that were made. It was not error for the court to decline to make the requested findings.").

Accordingly, the district court did not abuse its discretion by denying Jeff's motion for additional findings of fact.

III. DID THE DISTRICT COURT DETERMINE AN INCORRECT EXPIRATION DATE FOR THE PFA?

Jeff argues the district court erred in setting October 23, 2018, rather than May 15, 2018, as the PFA order's expiration date. Amy filed her initial petition on May 15, 2018, and a trial was conducted on August 30, 2017. The final PFA order was entered on October 24, 2017. Under K.S.A. 2018 Supp. 60-3107(e), a PFA may not be in place for longer than one year.

As previously discussed, "[a]n issue is moot where any judgment of the court would not affect the outcome of the parties' controversy." *Manly*, 287 Kan. 63, Syl. ¶ 4. Here, there is no relief we can grant Jeff if the district court erred on the PFA order's expiration date. The PFA order has expired, and we cannot give back the time that may have been lost due to an incorrect expiration date. This issue is moot.

IV. WAS THE PFA SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE?

Jeff argues that the PFA order was not supported by substantial competent evidence. Specifically, he argues that he acted with the intent to discipline his son, not to injure him, and that whatever injuries Joe may have sustained did not amount to bodily injury as required by the Act. Jeff also argues he acted in self-defense against Joe.

To resolve Jeff's argument, we must review the trial court's findings of fact and conclusions of law.

> "'Where the trial court has made findings of fact and conclusions of law, the function of an appellate court is to determine whether the findings are supported by substantial competent evidence and whether the findings are sufficient to support the trial court's conclusions of law. Substantial evidence is evidence which possesses both relevance and substance and which furnishes a substantial basis of fact from which the issues can reasonably be resolved. Stated in another way, "substantial evidence" is such legal and relevant evidence as a reasonable person might accept as being sufficient to support a conclusion.' *Tucker v. Hugoton Energy Corp.*, 253 Kan. 373, 377, 855 P.2d 929 (1993)." *Barnett v. Barnett*, 24 Kan. App. 2d 342, 348, 945 P.2d 870 (1997).

Moreover, "[w]e do not reweigh the evidence or make our own credibility determinations, and we generally view the evidence in the light most favorable to the party who prevailed in the district court." *Kerry G. v. Stacy C.*, 53 Kan. App. 2d 218, 221-22, 386 P.3d 921 (2016). In doing so, we must accept "all evidence and inferences

that support or tend to support the [district court's] findings as true, and . . . must disregard all conflicting evidence." *Frick Farm Properties v. Kansas Dept. of Agriculture*, 289 Kan. 690, 709-10, 216 P.3d 170 (2009).

In the context of PFA cases, we agree with another panel of our court which stated that we are to be highly deferential to the district court's findings:

> "[T]his court is extremely reluctant to involve itself in something as subjective as an order for protection from abuse. These matters frequently develop in emergency situations, and the ultimate judgment of the trial court in a case such as this may literally involve risk to the lives of all or some of the parties involved. Our view of these cases is a view based on the printed word as it comes to us in the record on appeal. We are quite reluctant to substitute our judgment based on that record for the much more objective judgment of the trial judge, who is there in the courtroom and is able to view the parties and make a real-life judgment on the situation that exists. It is only in a case of the most egregious breach of the trial court's discretion that this court would become involved in second-guessing a trial court's decision in entering a decree protecting one of the parties to a domestic relations action from abuse." *Trolinger v. Trolinger*, 30 Kan. App. 2d 192, 194, 42 P.3d 157 (2001), *rev. denied* 273 Kan. 1040 (2002).

The Protection from Abuse Act (the Act), K.S.A. 60-3101 et seq., pertains to certain acts between intimate partners or household members when abuse as defined under the Act has occurred. *Kerry G.*, 53 Kan. App. 2d at 221. "'Intimate partners or household members'" are "persons who are or have been in a dating relationship, persons who reside together or who have formerly resided together or persons who have had a child in common." K.S.A. 2018 Supp. 60-3102(b). Under the Act:

> "(a) 'Abuse' means the occurrence of one or more of the following acts between intimate partners or household members:

(1) Intentionally attempting to cause bodily injury, or intentionally or recklessly causing bodily injury.

(2) Intentionally placing, by physical threat, another in fear of imminent bodily injury." K.S.A. 2018 Supp. 60-3102(a)(1)-(2).

The Act permits a parent to seek relief on behalf of a minor child by filing a verified petition alleging abuse by a current or former household member. K.S.A. 2018 Supp. 60-3104(b). The Act is to be "liberally construed to promote protection of victims." K.S.A. 60-3101(b).

Jeff's principal defense is that he was engaging in parental discipline without an intent to injure and that Joe did not suffer bodily injury. In *Paida v. Leach*, 260 Kan. 292, 917 P.2d 1342 (1996), the Kansas Supreme Court applied the Act in the context of parental discipline. Acknowledging that the Act focused on protecting spouses, the court stated:

"The discipline of children and the abuse of spouses share little common ground. Because these disparate family interactions fall under the same legislative enactment, the trial court can and should determine in light of all the circumstances in each individual case whether the plaintiff has shown abuse by a preponderance of the evidence. Those circumstances will include the age of the alleged victim and his or her relationship to the alleged abuser. Neither reason nor the limits clearly expressed by the legislature in the Act permits a trial court judge to overlook the infliction of bodily injury. However, the Act is not intended to dictate acceptable parental discipline or unnecessarily interfere in the parent/child relationship absent a clear need to protect the child. The State's intrusion should be limited to injunctive relief where parental conduct causes more than minor or inconsequential injury to the child." 260 Kan. at 300-01."

The court further noted that "[t]here undoubtedly are instances when discipline of children escalates into domestic violence which would warrant relief under the Act, but

discipline of children is not the chief evil at which the Act was aimed. The principal purpose of the legislation was to provide relief for battered spouses or cohabitants." 260 Kan. at 300. As a result, the *Paida* court concluded that under the Act, bodily injury arising from parental discipline of a child must involve "substantial physical pain or an impairment of physical condition." 260 Kan. at 301. The court indicated that "defining bodily injury to exclude trivial or minor consequences . . . would lessen the potential for the exercise of unbridled trial court discretion." 260 Kan. at 301. Applying this standard, it ultimately concluded that the teenage son's sore shoulder and a teenage daughter's small cuts to her lips from her braces after her father washed her mouth out with soap didn't constitute bodily injury. 260 Kan. at 301; see also *Barnett*, 24 Kan. App. 2d at 352 (parent's act of striking child with switch causing welts and hitting child in face causing reddening on cheek not substantial).

However, over the years our Supreme Court's holding in *Paida* has been limited to cases only involving instances of alleged abuse by a parent against his or her child. *Palos v. Hernandez*, No. 106,202, 2012 WL 2620561, at *5 (Kan. App. 2012) (unpublished opinion); see *Trolinger*, 30 Kan. App. 2d at 197 (trial court not required to find substantial pain and impairment to find abuse of spouse). But see *Trolinger*, 30 Kan. App. 2d at 198 (application of different standard to stepson as opposed to spouse "not a workable solution"). Relying on the opinion of another panel of our court in *M.L. v. T.W.L.*, No. 113,634, 2016 WL 852974 (Kan. App. 2016) (unpublished opinion), the district court here went even further and held that *Paida*'s substantial pain and impairment standard need not be applied in instances where the parent's actions "went beyond parental discipline." In *M.L.*, the panel held the father's actions went beyond parental discipline when he pulled out his daughter's hair and struck her on the side of the head with his fists three or four times because he had already grounded her before the physical altercation ensued. It concluded that district court's abuse finding was proper because the father acted in anger rather than in an effort of parental discipline. 2016 WL 852974, at *3.

We disagree with the district court's holding on this point because it is contrary to our Supreme Court's declaration in *Paida*: "[T]he Act is not intended to dictate acceptable parental discipline or unnecessarily interfere in the parent/child relationship absent a clear need to protect the child. . . . [I]t would be undesirable to have each judge freely imposing his or her own morality [or] notions of child rearing [on] litigants." 260 Kan. at 300-01; see also *Graham v. Herring*, 297 Kan. 847, 861, 305 P.3d 585 (2013) (one Court of Appeals panel has right to disagree with another); *Becker v. Knoll*, 301 Kan. 274, 275, 343 P.3d 69 (2015) (district court's conclusions of law are reviewed de novo). We concede that the determination of whether a parent went beyond appropriate parental discipline could go to the issue of the parent's intent because we see parental discipline as an effort by a parent to compel his or her child to act or not act in a certain way as opposed to an intent to injure. See 260 Kan. at 297 (willfully causing injury different from "accidentally inflicting injury while intentionally performing some action"). However, *Paida*'s substantial pain and impairment standard applies to any case under the Act where it is alleged that a parent intentionally or recklessly caused bodily injury to his or her child. 260 Kan. at 301; see K.S.A. 2018 Supp. 60-3102(a)(1). The district court erred in rejecting *Paida*'s application to this case.

However, the district court can be correct even if it is for the wrong reason. See *Gannon v. State*, 302 Kan. 739, 744, 357 P.3d 873 (2015). The Act's definition of abuse does not just include intentionally or recklessly causing bodily injury, but also includes intentionally attempting to cause bodily injury or intentionally placing, by physical threat, another in fear of imminent bodily injury. K.S.A. 2018 Supp. 60-3102(a)(1), (2). These latter two definitions of abuse do not require any bodily injury. See *Palos*, 2012 WL 2620561, at *5. As a result, *Paida*'s substantial pain and impairment standard has very limited or no application in cases under the Act involving an attempt to cause bodily injury or threats of placing someone in fear of imminent bodily injury. See 260 Kan. at 297 (no allegation parent willfully attempted to cause bodily injury). In our case, in

addition to alleging abuse by intentionally or recklessly causing bodily injury, Amy also claimed that Jeff intentionally attempted to cause bodily injury to Joe.

Turning to the facts of this case, the district court found that because of the past incident at the restaurant and the yelling in the basement just before the confrontation here, Jeff appeared to have "lost it" and lashed out against Joe in anger rather than in a form of discipline. The district court found that Jeff chose to confront Joe about why he needed to come inside instead of letting Joe "burn himself out" in the basement, which was contrary to the counselor's recommendations that the best way to handle Joe's outbursts when he was triggered was to remain calm and/or leave the situation. Jeff was well aware of Joe's unique mental health issues and the counselor's recommendations as the family had been working on Joe's mental health issues for years. Jeff had already required Joe to leave N.M.'s car and chose to follow him to the basement and confront him while Joe was triggered. The district court concluded that Jeff was not imposing parental discipline when he choked Joe as he dragged him across the driveway, threw him to the ground, and then hit him. Instead, the district court found that Jeff was striking out in anger. It is clear that the district court viewed Jeff's actions as inconsistent with an intent to impose parental discipline and instead as demonstrating an intent to injure. See *State v. Griffin*, 279 Kan. 634, 638, 112 P.3d 862 (2005) ("[I]ntent, a state of mind existing at the time of an [incident] . . . may be established by acts, circumstances, and inferences reasonably [drawn] from the evidence.").

Ultimately, the district court found Jeff's conduct on May 11, 2017, constituted abuse. Specifically, the district court found that Jeff

> "intentionally or recklessly caused bodily injury to Joe when he grabbed Joe by the neck and dragged him about 7 feet across the driveway and threw him down on the grass to the point he could not breathe. This was followed by Jeff hitting him in the face. At the very least, Jeff attempted to cause bodily injury."

Under the facts of this case, and viewing that evidence in the light most favorable to Amy and Joe, substantial competent evidence supports the district court's holding that Jeff's actions, at a minimum, showed he intentionally or recklessly attempted to cause bodily injury to Joe. See *State v. Battles*, No. 113,086, 2016 WL 2610256, at *6 (Kan. App. 2016) (unpublished opinion) (holding choking satisfied requirement of infliction of bodily injury in kidnapping case).

Finally, Jeff also argues that he acted in self-defense. However, the district court heard Jeff's self-defense testimony and clearly did not find it credible. We are constrained by the district court's credibility determination of the witnesses. See *Wolfe Electric, Inc. v. Duckworth*, 293 Kan. 375, 407, 266 P.3d 516 (2011). Taking all inferences in favor of Joe, we must disregard any conflicting evidence. See *Frick Farm Properties*, 289 Kan. at 709-10. In accordance with our standard of review, we conclude Jeff's self-defense argument is without merit.

Affirmed.