IN THE COURT OF APPEALS OF IOWA

No. 0-320 / 09-1540
Filed June 30, 2010

BARBARA TAYLOR,
Plaintiff-Appellant,
vs.
TAMERA PETERSON,
Defendant-Appellee.

BARBARA TAYLOR,
Plaintiff-Appellant,
vs.
KIRBY PETERSON,
Defendant-Appellee.

MEGAN SNYDER,
Plaintiff-Appellant,
vs.
CHRISTOPHER PRICE,
Defendant-Appellee.

Consolidated appeals from the Iowa District Court for Sioux County and the Iowa District Court for Woodbury County, Jeffrey Neary (Sioux County) and Duane Hoffmeyer (Woodbury County), Judges.

Appellants appeal from the district courts' dismissals of their petitions for relief from domestic abuse. **REVERSED AND REMANDED.**

Rhoda M. Tenuta of Legal Services Corp. of Iowa, Sioux City, for appellant.

Tamera Peterson, Sioux Falls, South Dakota, pro se appellee.

Kirby Peterson, Sioux Falls, South Dakota, pro se appellee.

Christopher Price, Sioux City, Iowa, pro se appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

I. Background Facts and Proceedings

A. Taylor v. Tamera Peterson and Taylor v. Kirby Peterson

On September 22, 2009, Barbara Taylor filed two pro se petitions for relief from domestic abuse. She used the standard forms required for petitions for relief from domestic abuse. The named defendants were Tamera Peterson, Taylor's daughter, and Kirby Peterson, Tamera's husband. The petitions did not state clearly the relationships among the parties, although Taylor checked the box for "Lived together within one year of the assault, but not at the time of the assault," a relationship qualifying for relief from domestic abuse under Iowa Code chapter 236 (2009).[1]

In her petition against Tamera, Taylor alleged that on September 18, 2009,

> Tamera got very angry and came towards me yelling at me . . . and started pushing me backwards (knowing I have trouble with my legs and fall easily). She knocked a coke cup from my hands and kept push [sic] on me going towards the house. . . . [S]he acted like she was going to hit me. She would raise her hand, act as though she was going to strike me and then drop her hand and push me.

In her petition against Kirby, Taylor alleged that on September 18, 2009, Kirby

> used foul language and made threats of heads rolling, bring [sic] friends up to [Taylor's hometown] and destroy my home. I was

[1] This broadly defined qualifying relationship includes "persons who have been family or household members residing together within the past year." Iowa Code § 236.2(2)(d). "Family and household members" are defined as "spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity." Iowa Code § 236.2(4)(a). The Iowa Supreme Court has approved a list of six indicia to consider in determining whether individuals are cohabiting. *See State v. Kellogg*, 542 N.W.2d 514, 518 (Iowa 1996). This appeal does not involve the issue of whether the plaintiffs met the criteria of the qualifying relationship.

> afraid he was going to get off bike to attack me. Kirby has been abusive to others and has gotten very angry at me and threatened me many times over the last year. He also has become violent and destructive to my home and property.

On September 22, 2009, the District Court for Sioux County issued separate orders denying temporary relief and dismissing the petitions. The orders in both cases were form orders on which the district court had checked two boxes to explain the findings of the court that "There is insufficient evidence of an assault" and "There is insufficient evidence of a threat and the apparent ability to immediately carry out the threat." No record was made in either case and no further hearing was set in either matter.

Taylor filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2) through counsel asking that the district court rescind the orders dismissing her petitions for relief from domestic abuse and enter orders setting hearings on her petitions. On September 28, 2009, the district court denied Taylor's motion, stating that since it was required to use a form order approved by the supreme court to grant an ex parte temporary protective order, it was expected to "perform a valid gateway function in determining whether matters brought before it pursuant to Chapter 236 are advanced."

B. Snyder v. Price

On October 13, 2009, Megan Snyder filed a pro se petition for relief from domestic abuse. The named defendant was Christopher Price. Like Taylor, Snyder used the form petition and checked the qualifying relationship box that states that she had lived with Price within one year of the assault but not at the

time of the assault, a relationship qualifying for relief from domestic abuse under Iowa Code chapter 236.

In her narrative, Snyder asserted that on October 10, 2009, Price held the parties' eight-month-old child in his arms "bouncing her head around while freaking out." She further stated that Price called the police and continued "[s]creaming and shaking [the child's] head around while the cop was there." She alleged that this incident occurred in front of her other child who was six years old at the time.

On October 13, 2009, the district court issued an order denying temporary relief and dismissing the petition. The order was a form order on which the district court had checked three boxes to explain the findings of the court that: (1) There is insufficient evidence of an assault; (2) There is insufficient evidence of a threat and the apparent ability to immediately carry out the threat; and (3) A minor who witnesses an assault or who is assaulted by a family member or other party is not permitted to file under the domestic abuse chapter of the Iowa Code. The order further directed Snyder to contact the county attorney or the Iowa Department of Human Services. No record was made in the case and no further hearing was set in the matter.

C. Appeals

Both plaintiffs/protected parties appealed, and their appeals were consolidated. They argue: (1) the district courts were compelled to set evidentiary hearings on their petitions for relief from domestic abuse; (2) their petitions were sufficient to meet notice pleading requirements and to survive dismissal; and (3) the district court erred in determining that dismissal of Taylor's

petitions was mandated by a form order. None of the respondents/defendants filed a responsive brief.

II. Standard of Review

Given that the district courts dismissed these actions sua sponte on the pleadings, we review for errors at law. Iowa R. App. P. 6.907.

III. Merits

We agree with the plaintiffs/protected parties that their pro se petitions were sufficient under Iowa's notice pleading requirements to proceed to hearing. "Under notice pleading, nearly every case will survive motion to dismiss." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). "The petition need not allege ultimate facts that support the elements of the cause of action. However, the petition must allege enough facts to give the defendant 'fair notice' of the claim asserted so the defendant can adequately respond." *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). Both plaintiffs/protected parties used the prescribed form petition and both checked the box that alleged she had been threatened and that she feared for her physical safety. A checkmark on a form petition captioned "Petition for Relief from Domestic Abuse" gives fair notice of the claim asserted and is a fact allegation minimally sufficient under notice pleading to survive a dismissal; however, it may not be sufficient to support an ex parte temporary protective order, which is akin to a temporary injunction.

Further, the right to a hearing for the plaintiff/protected parties is established in Iowa Code section 236.4(1), which provides: "a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence." The legislature's use of the word "shall"

indicates a duty that is mandatory. *See* Iowa Code § 4.1(30)(a); *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000). A court may dismiss a domestic abuse petition without holding a hearing only in very limited situations. *See D.M.H. v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998) (holding chapter 236 does not create a right of action for children who witness domestic abuse); *Livingood v. Negrete*, 547 N.W.2d 196, 197 (Iowa 1996) (holding "the Domestic Abuse Act was not intended to apply to prison cellmates"). The record does not suggest that the district courts believed that either case on appeal fit within the recognized limited situations that would not require a hearing.

Snyder's narrative primarily described an assault committed by Price against their child, witnessed by an older child, which alone would not require a hearing because minors are not permitted to file a petition under this chapter of the Iowa Code. However, her petition also alleged, by checking the form's box, that Price had threatened her and that she feared for her physical safety. A pre-answer motion to dismiss is not granted whenever there is any version of the pleadings that could sustain relief. "A motion to dismiss is properly granted only if a plaintiff's petition 'on its face shows no right of recovery under any state of facts.'" *Rees*, 682 N.W.2d at 79 (quoting *Trobaugh v. Sondag*, 668 N.W.2d 577, 580 (Iowa 2003)). "In making this determination, we construe the petition in the light most favorable to the plaintiff." *Smith*, 513 N.W.2d at 730. Snyder's petition sufficiently alleged a "conceivable set of facts" entitling her to relief. *See Rees*, 682 N.W.2d at 79.

While we agree with the district court in Taylor's cases that the supreme court expects the trial courts to "perform a valid gateway function" in determining

whether the petition supports the granting of a temporary protective order under Chapter 236, that function only rarely will result in a dismissal of the petition, although it may result in a denial of temporary emergency relief.

Although the district courts were within their discretion in determining that none of these three petitions warranted the granting of a temporary protective order, none of the petitions is so deficient in its factual allegations to justify a dismissal before the hearing required by Iowa Code section 236.4(1). We remand for hearing on the merits of the petitions.

REVERSED AND REMANDED.

Vogel, P.J., concurs. Danilson, J., concurs specially

DANILSON, J. (concurring specially)

I specially concur as I agree that Iowa Code section 236.4(1) requires the outcome reached, but our ruling only perpetuates a process that is in dire need of refinement. For example, in one of the cases before us, *Snyder v. Price*, Snyder is left without the protection of a temporary or emergency protective order because of her failure to recite facts to establish a prima facie showing of domestic abuse. *See* Iowa Code § 236.3. At the same time, Price is required to appear for a hearing to determine if a permanent protective order should be entered without the benefit or notice of the specific facts alleged against him. If Snyder truly lacked facts to show domestic abuse, a dismissal would avoid wasting judicial resources. More importantly, if Snyder had sufficient facts, but simply failed to properly recite them, Snyder may be afraid or disinclined to appear for the hearing without the benefit of a temporary protective order. Petitioners like Snyder need help to recite their facts, and to determine if they have a valid basis for a protective order. Domestic abuse advocates are not always available and are unable to give legal advice.