

IN THE COURT OF APPEALS OF IOWA

No. 0-569 / 10-0060
Filed August 25, 2010

NIKI JO ROBERTSON,
Plaintiff-Appellee,

vs.

JEFFREY RAY ROBERTSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Karen A. Romano,
Judge.

Jeffrey Ray Robertson challenges an order of protection restraining him
from contact with Niki Jo Robertson. **AFFIRMED.**

Stacey N. Warren and Kodi A. Brotherson of Babich, Goldman, Cashatt &
Renzo, P.C., Des Moines, for appellant.

Niki Jo Robertson, Ankeny, appellee pro se.

Considered by Sackett, C.J., Potterfield and Tabor, JJ.

SACKETT, C.J.

Jeffrey Ray Robertson challenges a December 2, 2009 order of protection restraining him from contact with Niki Jo Robertson and from committing further acts of abuse or threats of abuse contending there was insufficient evidence to support the finding. On our de novo review giving consideration to the district court's factual findings, we affirm.

BACKGROUND. At the time of the alleged incidents Jeffrey and Niki were married. They are the parents of a son who celebrated his first birthday in March of 2009.

On November 18, 2009, Niki filed a petition for relief from domestic abuse alleging that while at their home, Jeffrey threatened if she left him he would pull her back by her hair and she feared for her physical safety. She also contended while at her mother's house, Jeffrey called her twenty-four times, came there and pounded on the doors and windows, among other things, and threatened physical abuse. A temporary order of protection was issued on November 18, 2009.

A hearing was held on December 2, 2009. Niki testified that she went to her mother's and Jeffrey called her there and came and pounded on the windows. She was inside behind locked doors and called the police. She also testified that at their son's first birthday party, Jeffrey physically put his hands on her arms and shook her body. She said Jeffrey breaks things. She testified there was an instance when they fought in the car and he punched the dashboard and window of the car and once when they fought he put a golf club

through the wall. She also testified when angry, he throws balls at the wall and has broken their son's toys. She said he frequently threatens to take their son from her.

Niki acknowledged on cross-examination that at no time had Jeffrey physically or sexually abused her and that she had not reported the birthday party incident in her petition for relief. She further acknowledged that the birthday party was in March of 2009 and she did not seek any relief from that alleged event.

Niki's sister, Kristy Kappelman, testified she saw Jeffrey shake her sister at the birthday party but had not seen similar behavior since. Heidi Lohne, also Niki's sister, testified she saw Jeffrey grab Niki by her arms and jerk her.

Jeffrey testified. He denied he threatened to pull Niki by her hair. He said he had not thrown things in Niki's direction, or made threats that indicated his intention to hurt Niki, nor did he shake her at their son's birthday party.

Jeffrey's mother testified that she had not heard Niki express any fear of Jeffrey and while at the birthday party, did not see Jeffrey put his hands on Niki. Kenneth Robertson, Jeffrey's father, who is part of the Ringgold County Sheriff's Posse, testified he was at the birthday party and Jeffrey and Niki interacted as a loving couple, he had no concern about Jeffrey's behavior, and did not see Jeffrey put his hands on his wife and shake her but they did hug.

Following the close of the testimony the district court made oral findings. Noting that the testimony about the birthday party incident was conflicting, the court found there was more credible testimony the incident occurred and it would

constitute an assault under Iowa Code section 708.1. The court concluded the alleged hair pulling incident was more a verbal altercation and that the evidence did not support a finding domestic abuse assault occurred then. The court found more credible the testimony that Jeffrey threw objects at walls behind Niki and that those incidents meet the definition of assault under either Iowa Code section 708.1(1) or (2). The court specifically found Jeffrey had committed domestic abuse assault and he represents a credible threat to the physical safety of Niki and the court entered the protective order.

SCOPE OF REVIEW. Civil domestic abuse cases are heard in equity and, thus, deserve a de novo review. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001); see *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). We review the record in its entirety and formulate our own opinion. *In re Marriage of Beecher*, 582 N.W.2d 510, 512-13 (Iowa 1998) (“We examine the entire record and adjudicate anew rights on the issues properly presented.”). Respectful consideration is given to the trial court’s factual findings and credibility determinations, but those findings are not binding upon us. See *Wilker*, 630 N.W.2d at 594.

DID TWO ASSAULTS OCCUR? Jeffrey’s contention is that there is no evidence to support a finding that an assault or assaults occurred. He contends the district court erred in concluding that he committed domestic abuse at the birthday party. He contends that Niki’s testimony and that of her two sisters did not provide substantial information as to where in the home and at what point in the birthday party the incident occurred. He notes that his parents testified they

witnessed no such incident and his father testified Niki and Jeffrey were loving towards each other at the birthday party and that they provided a description of Niki's home. He argues it is implausible such an incident could occur without more people seeing it happen, given the fact the home where the party was held was small and there were a number of people there. Jeffrey asks why, if it were as serious as Niki claimed, she did not call the police or report the incident before the day of the hearing and why she failed to mention the incident in her petition for relief from domestic abuse.

Jeffrey also contends that the district court erred in finding he committed assaults in throwing things. He argues the evidence of these incidents, which he denied, were not corroborated by other testimony and corroborating details. He argues Niki failed to mention any incidents of physical abuse in her petition and he advances the district court erred in concluding domestic abuse occurred and in granting the requested permanent protective order. He claims Niki's petition should have been dismissed.

Under Iowa Code section 236.5(1)(b) (Supp. 2009), a court may grant a protective order “[u]pon a finding that the defendant has engaged in domestic abuse.” For the purposes of chapter 236, domestic abuse is defined as “committing assault as defined in section 708.1.” Iowa Code § 236.2(2). Section 708.1 states:

A person commits an assault when, without justification, the person does any of the following:

1. Any act which is intended to cause pain or injury to, or which is intended to result in physical contact which will be insulting or offensive to another, coupled with the apparent ability to execute the act.

2. Any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

We agree with Jeffrey that his version of events, if believed, would support a dismissal of Niki's petition. We also agree that the testimony in support of Niki's position lacked many specific details and her late reporting of the birthday party incident raises questions. However, the district court weighed the credibility of the parties, and found Niki's evidence more credible. In cases such as this, which turn wholly on the credibility of the parties, we give weight to the district court's credibility assessments, particularly as it had an opportunity to observe the witnesses firsthand. We accordingly affirm the district court.

AFFIRMED.