

IN THE COURT OF APPEALS OF IOWA

No. 1-040 / 10-1398
Filed February 23, 2011

Upon the Petition of
RENEE LEE MANDERS,
Petitioner-Appellee,

And Concerning
DALE LORAS MANDERS,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge.

Dale Manders appeals from the district court's grant of Renee Manders' petition for relief from domestic violence. **AFFIRMED.**

Robert L. Sudmeier, Jenny L. Harris, and Amanda L. Elkins of Fuerste, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Kimberly C. Roddick of Reynolds & Kenline, L.L.P., Dubuque, for appellee.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.

DANILSON, J.

Dale Manders appeals from the district court's grant of Renee Manders' petition for relief from domestic violence. Dale argues Renee did not meet her burden of proving that he committed domestic abuse because he did not intend to place her in fear and she "failed to prove a threat, much less an overt act." He also claims the district court erred in basing its ruling in part on an allegation not listed in Renee's petition for relief. Upon our de novo review, we find a preponderance of the evidence supports the district court's conclusion an assault was committed by Dale. We affirm the district court's entry of a protective order for Renee.

I. Background Facts and Proceedings.

Dale and Renee Manders have been married for eleven years and have no children. Dale is fifty-one years old; Renee is forty-eight years old. Renee filed a petition for dissolution of marriage on January 8, 2010. The parties attended marriage counseling, reconciled, and Renee withdrew her petition on April 9, 2010.

On July 12, 2010, Dale filed a petition for dissolution of marriage. On July 15, 2010, Renee filed a petition for relief from domestic abuse pursuant to Iowa Code chapter 236 (2009). In the petition, Renee alleged Dale "has threatened me and I fear for my physical safety." Renee described several incidents of threats she had received from Dale, including in part:

- Dale told my daughter . . . that he has a GPS tracker in my car so he knows where I am at—at all times.
- Made me hand over my paychecks to him so I would have no money. He said he would pay all bills.

- Ripped down the deck railing on June 12 (located on Feeney Rd). Refused to fix it.
- Dale kicked down the front door (lock and dead bolt). He used the wrong key and accused me of changing locks. He replaced this with a used door (mobile home located on Feeney Rd). June 29.
- Hit the dashboard with his fists in my car. June 26. Estimated at Runde's to fix \$430.20.
- Dale ripped out the keys in the ignition when the car was turned on and running. Bent the key, broke the key ring, and keys went flying.
- He is shifting a few of his many guns from residence to residence.
- Driving recklessly with me in the car with him. When I asked Dale to slow down he would speed up. 70-80 mph. (Went to Bellevue to meet friends on Hwy 52 on July 3; Went to LaMotte to visit friend on Old Davenport Rd on July 10)
- Dale came storming into the house and threw his hands. He grabbed this small wooden table and threw it with clothes on it. July 10.
- With all the storming in and out of the residence on Feeney Rd, Dale has made our two Labs (dogs) afraid of him. They go into hiding until they know it is safe to come out.
- We were cleaning out the thistles around the house. Dale started throwing them at me. I asked him to stop 3 times and he said "F*** you, Renee." He had a hatchet in his hand and I thought he was going to come after me.

That same day, the court granted Renee a temporary protective order. A hearing on the petition was held August 10, 2010. Both parties were represented by counsel and testified. Renee described several recent incidents that caused her to be afraid of Dale. She stated she was in fear of being hit by Dale when he "ran towards her and pulled down the deck railing." She described another recent incident when she "was very afraid of him" when he "got mad and hit the dashboard with his fists." Renee stated that another time Dale "walked past" her during an argument, "jerked" a table, and "threw it down on the floor." Renee described another argument that occurred while Dale was outside using a

hatchet or large gardening tool to remove thistles, and he threw thistles at her and swung the hatchet near her.

Renee further noted Dale's "controlling behavior," and explained his control over all the money and the fact that he needs to know where she is "24/7" and that he did not allow Renee to have her cell phone on when she was with him. Renee stated she is afraid of Dale because she does not know what he is capable of doing. She testified that since she moved out of their home in January, Dale is more explosive and his outbursts have recently "kept getting worse and worse." Renee described Dale's unstable behavior as having caused their two dogs to be afraid of him, that "he'd kick them" if they were in his way, and that the dogs went into hiding when he was around. Renee further testified that Dale owned over 100 guns that he had been moving recently to different locations. She stated he "had talked about killing people," including his "ex-wife and his niece and his sister," and he had told her "multiple times that anybody that does anything wrong to him, they're like on his hit list."

On cross-examination, Dale's attorney asked Renee a line of questions regarding Dale's behavior, including:

DALE'S ATTORNEY: He's never thrown you down to the ground and stood over top of you; correct?

RENEE: There was one time that—in our bedroom that he got me down and he wouldn't let me up.

DALE'S ATTORNEY: Is that in your petition here?

RENEE: No, it's not.

Neither party expanded on Renee's statement. Also on cross-examination, Renee acknowledged that at no time had Dale hit her, threatened her, spit at her,

kicked her, dragged her, or pointed a weapon at her. She did, however, state that she had been in fear of being assaulted by Dale.

Dale denied he had ever threatened Renee and stated he had “done nothing but good things for her.” He denied he ripped down the deck rail in a threatening manner. He admitted he took down the front door, but explained he used the wrong keys and mistakenly thought Renee had changed the locks. He stated that he replaced the door before Renee got home. He admitted he was irritated with Renee when he punched the dashboard in Renee’s car, but alleged he did not leave a mark. He denied intentionally throwing thistles at Renee and claimed he did not know she was behind him when he was working. Dale further denied that he threw a table at Renee; drove recklessly while she was in his car; or ripped the keys out of the ignition. He stated he never threatened Renee with a gun or pointed a gun at her and explained he was only transporting his guns to prevent them from rusting after he took a gun safety test. He stated he was only in charge of the money to pay for joint bills and pay off Renee’s credit card debt. He also testified that the parties’ dogs sleep on his bed at night.

The district court entered a written order, finding by a preponderance of the evidence that Dale committed a domestic abuse assault:

[Dale] on a number of occasions committed an act which was intended to place [Renee] in fear of immediate physical contact which could be painful, injurious, insulting or offensive coupled with the apparent ability to execute the act. On one occasion Dale restrained Renee on a bed. Recently Dale threw thistles at Renee.

The court’s order prohibited Dale from having any contact with Renee.

Dale now appeals.

II. Scope and Standard of Review.

Because this civil domestic abuse case was heard in equity, our review is de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). The allegations of domestic abuse must be proven by a preponderance of the evidence. *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). We give respectful consideration to the district court's factual findings and credibility determinations, but those holdings are not binding on appeal. *Wilker*, 630 N.W.2d at 594.

III. Merits.

"Domestic abuse" occurs when a person commits an assault as defined in section 708.1 under certain circumstances, such as assault between family or household members who reside together at the time of the assault. Iowa Code § 236.2(2)(a). Section 708.1 states, in relevant part:

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

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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.

Dale argues Renee did not meet her burden of proving that he committed domestic abuse because he did not intend to place her in fear, and she "failed to prove a threat, much less an overt act." Our supreme court announced in *State v. Fountain*, 786 N.W.2d 260, 265 (Iowa 2010), that assault includes an element of specific intent. Specific intent has been defined as:

"Specific intent" means not only being aware of doing an act and doing it voluntarily, but in addition, doing it with a specific purpose in mind.

Because determining the defendant's specific intent requires you to decide what the defendant was thinking when an act was done, it is seldom capable of direct proof. Therefore, you should

consider the facts and circumstances surrounding the act to determine the defendant's specific intent. You may, but are not required to conclude a person intends the natural results of his or her acts.

See Iowa Crim. Jury Inst. 200.2 (2004). The intent element required by the statute "may be inferred from the circumstances of the transaction and the actions of the defendant." *State v. Keeton*, 710 N.W.2d 531, 534 (Iowa 2006) (quoting 21 Am. Jur. 2d *Criminal Law* § 128, at 214-15 (1998)); *State v. Taylor*, 689 N.W.2d 116, 132-33 (Iowa 2004). Renee is assisted in meeting her burden of proof on this element "by the principle that an actor will ordinarily be viewed as intending the natural and probable consequences that usually follow from his or her voluntary act." *Taylor*, 689 N.W.2d at 132.

We acknowledge Dale's version of some of the events, if believed, would support a dismissal of Renee's petition. However, Renee also described several events that support granting the petition. We give weight to the district court's credibility assessments, particularly as it had an opportunity to observe the witnesses firsthand. *Wilker*, 630 N.W.2d at 594.

Dale concedes he punched the dashboard while irritated with Renee when she was driving a vehicle. Indeed, Renee testified that Dale's actions in punching the dashboard made her "very afraid" of him. We find this is a natural and probable consequence of someone acting in such a manner. *See id.* We do not suggest the act of pounding on a vehicle's dashboard constitutes an assault in every situation, even though such an act may be offensive to other occupants. However, in these circumstances, Dale was irritated with Renee, Dale and Renee were in the midst of an argument, Dale was seated directly beside Renee,

and Dale had the apparent ability to commit physical contact upon Renee. The record in this case supports the finding that Dale intended to make Renee fear immediate physical contact when he punched the dashboard while sitting beside her in the car.

Dale also acknowledged throwing thistles towards Renee, but contended he did not know she was in his near vicinity. The court was not required to give weight to Dale's explanation nor do we. Dale's actions in throwing thistles at Renee causing Renee to be uncomfortable and afraid of Dale, supports the finding that Dale intended to place Renee in fear of physical contact that would be painful, injurious, insulting, or offensive.

Dale claims the court erred in relying in part on the alleged bedroom incident (in which Dale got on top of Renee and restrained her) because it was not listed in Renee's petition for relief. On cross-examination Renee testified about the incident and admitted she did not list it in her petition for relief. No further testimony from either party was taken in regard to the incident. Dale did not object to the testimony or ask for a continuance and did nothing to suggest he was surprised by the allegation. See Iowa R. Civ. P. 1.457 (stating that if a party objects to evidence not raised by the pleadings, the court "may grant a continuance to enable the objecting party to meet such evidence"). Nor did he discuss the allegation in closing argument or file a motion to strike. Assuming, *arguendo*, that Dale has properly preserved this issue for appeal, we do not rely on Renee's allegation of the bedroom incident in reaching our conclusion that the petition for relief was properly granted.

Upon our de novo review of the record, we find a preponderance of the evidence supports the district court's conclusion an assault was committed by Dale for the incidents relating to hitting his fists on the dashboard and throwing thistles. Accordingly, we affirm the district court's entry of a protective order for Renee.

AFFIRMED.