

**IN THE COURT OF APPEALS OF IOWA**

No. 1-860 / 11-0299  
Filed December 7, 2011

**TOBY JO BALL,**  
Plaintiff-Appellee,

**vs.**

**TED R. BALL JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Jeffrey L. Poulson, Judge.

Defendant appeals a protective order, claiming the district court did not have jurisdiction to enter it. **AFFIRMED.**

Craig H. Lane of Craig H. Lane, P.C., Sioux City, for appellant.

Toby Jo Ball, Sioux City, pro se.

Considered by Vogel, P.J., Eisenhauer, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

**MAHAN, S.J.****I. Background Facts & Proceedings.**

On January 5, 2011, Toby Ball filed a petition in the Iowa District Court for Woodbury County for relief from domestic abuse, pursuant to Iowa Code chapter 236 (2011), against her former husband, Ted Ball. She gave a mailing address in Sioux City, Iowa, and also stated Ted's address was in Sioux City. Although the parties were divorced in 2005, they had been living together until they separated at some point prior to the present proceedings.

The case proceeded to a hearing on January 19, 2011. Under oath, Toby testified her address was in Sioux City, Iowa. Toby testified to an incident on May 15, 2010, where she alleged Ted punched her in the nose and mouth, causing bleeding. She asserted this occurred in their vehicle as they were driving to their home in Homer, Nebraska. She also testified to an incident which occurred on January 1, 2011, where Ted shoved her into a shelf at their home in Nebraska.

At the close of Toby's testimony, Ted made an oral motion to dismiss based on jurisdictional grounds. He pointed out that both of the incidents of alleged abuse occurred in Nebraska. He also asserted that Toby lived in Nebraska, rather than Iowa. He pointed out that in her petition Toby stated she was going "to go stay with my mom for a few days while he calmed down." The district court stated it would not rule on the motion at that time.

Ted, also under oath, testified his mailing address was in Sioux City, Iowa, at his parents' house. He testified that on May 15, 2010, Toby was intoxicated and she began to hit him as they were driving home from a wedding. He stated

he tried to block her from hitting him and ended up hitting her in the nose, which made her nose bloody. As to the January 1, 2011 incident, Ted testified he crushed Toby's cigarettes and threw them in a closet, but did not push her at all.

The district court entered a protective order. The court found "the evidence is uncontroverted that all of the assaults which form the basis for this protective order did occur outside of the state of Iowa." The court concluded, however, both parties were currently residing in Iowa based upon the addresses given in the petition and their testimony at the hearing and on this basis the court had authority to enter the protective order. The court determined Toby's testimony was more credible than Ted's. The court found that two episodes of assault had occurred. Ted appeals the protective order.

## **II. Jurisdiction.**

Ted contends the district court should have granted his motion to dismiss for lack of jurisdiction because no acts of domestic abuse occurred in Iowa and both parties resided in Nebraska. Our review of a district court's ruling on a motion to dismiss is for the correction of errors at law. *Duder v. Shanks*, 689 N.W.2d 214, 217 (Iowa 2004). The court's factual findings are binding on appeal if they are supported by substantial evidence. *Id.* The reviewing court is not bound, however, by the court's conclusions of law. *Id.*

In *Bartsch v. Bartsch*, 636 N.W.2d 3, 5 (Iowa 2001), the wife alone had moved to Iowa, and the husband lived in another state when she filed a petition for a protective order. The case does not mention any incidents of domestic abuse that occurred in Iowa. The court concluded Iowa courts did not have

personal jurisdiction over the defendant but could enter a protective order against him. *Bartsch*, 636 N.W.2d at 6. The supreme court stated:

We believe the district court's finding of insufficient contacts for personal jurisdiction is supported by substantial evidence . . . .

Nevertheless, we affirm the legal conclusion by the district court that, under these circumstances, personal jurisdiction over a nonresident defendant is not required for a court to enter an order preserving the protected status afforded Iowa residents under chapter 236.

*Id.* The court noted “[t]he interstate nature of many abusive relationships, and the concomitant need for protection extending beyond the borders of a particular state.” *Id.* at 9. Based upon the ruling in *Bartsch*, the district court did not lack authority to issue a protective order when the incidents of domestic abuse took place outside of Iowa even without personal jurisdiction over Ted.

In addition, section 236.3(1) provides, “A person, including a parent or guardian on behalf of an unemancipated minor, may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides.” We also observe *Bartsch* held that an Iowa court could enter “an order protecting a *resident* Iowa family from abuse.” *Id.* at 10 (emphasis added).

In her petition Toby gave her address and that of Ted as being in Sioux City, Iowa. Furthermore, at the hearing, when asked for her address Toby gave an address in Sioux City, Iowa. Also, when Ted was asked for his mailing address, he testified he currently had an address in Sioux City, Iowa. While there was evidence the parties had previously lived in Homer, Nebraska, the district court could properly find the parties were currently residing in Iowa. Given the fact both parties gave an Iowa address, the court could conclude Iowa was the proper venue for Toby's petition for relief from domestic abuse under

section 236.3(1). We conclude the district court did not err in granting the protective order in this case.

### **III. Substantial Evidence.**

Ted contends there is not sufficient evidence in the record to support a finding that domestic abuse took place. Civil domestic abuse cases are heard in equity, and our review is de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). “Respectful consideration is given to the trial court’s factual findings and credibility determinations, but not to the extent where those holdings are binding upon us.” *Id.*

The district court specifically found Toby’s testimony was more credible than Ted’s testimony at the hearing. The court had the advantage of being able to observe the demeanor of the witnesses. *See Conklin v. Conklin*, 586 N.W.2d 703, 706-07 (Iowa 1998); *In re Marriage of Vrban*, 359 N.W.2d 420, 423 (Iowa 1984). Based upon our de novo review of the record, we give deference to the court’s determination of credibility of the witnesses. We conclude there is sufficient evidence in the record to support the court’s factual findings of domestic abuse.

We affirm the decision of the district court.

**AFFIRMED.**