

IN THE COURT OF APPEALS OF IOWA

No. 2-036 / 11-1289
Filed February 15, 2012

JULIE GRAGEN,
Petitioner-Appellee,

vs.

MAHLON GRAGEN JR.,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Terry Rickers, Judge.

A husband appeals the entry of a domestic abuse protective order by the district court. **AFFIRMED.**

Nicholas A. Bailey of Bailey Law Firm, P.L.L.C., Mitchellville, for appellant.

Julie Gragen, Altoona, pro se.

Considered by Potterfield, P.J., Doyle, J., and Huitink, S.J.*

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

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

Mahlon and Julie Gragen are married. On July 18, 2011, Julie filed a petition for relief from domestic abuse pursuant to Iowa Code chapter 236 (2011). She claimed Mahlon had wished she were dead, grabbed her arm leaving bruising, threatened to put a gun to her head and beat the “crap” out of her, and choked her. The court entered a temporary protective order and set a hearing for July 21, 2011.

At the hearing, Julie testified the most recent incident had occurred in April 2011. She stated Mahlon told her, “I will not hesitate to put a gun to your—and beat the living sh** out of you, and I do not care who knows.” Julie stated he had her against a wall and had his hands around her neck, choking her. She testified that when he finally did let go of her he took her telephone so she could not call the police. She also testified about an earlier incident where Mahlon shoved her so hard she fell on her back. Julie stated she waited until July 2011 to report the abuse because recently he had started scaring her by asking why she was still alive.

Mahlon denied laying his hands on Julie or acting in a threatening manner toward her. He testified Julie was a drug addict. Their family was involved with the Iowa Department of Human Services. Mahlon claimed Julie made up the claim of domestic abuse because she was angry with him because he reported her to the police for possession of drug paraphernalia. He also claimed Julie wanted him out of the house so she could sell their possessions in order to pay for illegal drugs.

The district court issued a final domestic abuse protective order, prohibiting Mahlon from having contact with Julie for one year. The court found by a preponderance of the evidence that domestic abuse had occurred. The court found that after observing the parties, Mahlon was not credible on issues regarding abuse. Mahlon appeals the court's decision.

II. Standard of Review.

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.*

III. Merits.

Mahlon contends the district court failed to give proper weight to the length of time from the occurrence of the alleged domestic abuse to when it was reported. He asserts that the fact Julie did not file a petition for relief from domestic abuse until several months after the alleged incident raises questions about her credibility. He also contends the court failed to give proper weight to the motives she had to fabricate allegations of domestic abuse. Furthermore, Mahlon claims the court gave improper weight to his failure to look the judge in the eye during his testimony.

A party claiming domestic abuse must prove the allegation by a preponderance of the evidence. Iowa Code § 236.4(1); *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). In order to show there has been "domestic abuse," the party must show there has been an assault, as defined in section

708.1,¹ under certain circumstances, such as that the parties were family or household members who resided together at the time of the assault. See Iowa Code § 236.2(2). The State has a strong interest in protecting Iowa residents from domestic abuse. *Bartsch v. Bartsch*, 636 N.W.2d 3, 10 (Iowa 2001).

The district court was aware of Mahlon's claims that Julie had fabricated the claims of domestic abuse. The court considered the evidence and found Mahlon was not credible. The court had the opportunity to observe the demeanor of the witnesses, and therefore with respect to the court's determination of credibility, we give weight to the court's findings. See *In re Marriage of Murphy*, 592 N.W.2d 681, 683 (Iowa 1999). "Understandably trial court was in a better position than we are to observe the conduct of all witnesses, including the parties hereto, and determine the credibility of their testimony." *Paxton v. Paxton*, 231 N.W.2d 581, 584 (Iowa 1975).

On our de novo review of the evidence, we concur in district court's finding that Julie proved by a preponderance of evidence there had been domestic abuse. We affirm the court's issuance of a final domestic abuse protective order.

AFFIRMED.

¹ In section 708.1 an assault is defined as: (1) "[a]ny 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) "[a]ny 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"; or (3) "[i]ntentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another."