

IN THE COURT OF APPEALS OF IOWA

No. 2-241 / 11-1550
Filed May 23, 2012

H.K.H.,
Plaintiff-Appellee,

vs.

S.E.H.,
Defendant-Appellant.

Appeal from the Iowa District Court for Sac County, Gary L. McMinimee,
Judge.

Defendant appeals a final domestic abuse protective order entered by the
district court. **AFFIRMED.**

James R. Van Dyke of Eich, Van Dyke & Werden, P.L.C., Carroll, for
appellant.

Charles A. Schulte of Schulte & Graven Law Firm, P.C., Sac City, for
appellee.

Considered by Vaitheswaran, P.J., Mullins, J., and Huitink, S.J.*

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

HUITINK, S.J.

S.E.H. appeals from the trial court's final protective order entered in Iowa Code chapter 236 (2011) proceedings. S.E.H. contends the record is insufficient to support the trial court's determination he committed domestic abuse assault against his estranged wife, H.K.H. More specifically, S.E.H. argues the evidence fails to show he had the specific intent to commit the underlying assault required for an adjudication of domestic abuse. Because a preponderance of the evidence of record establishes S.E.H. committed domestic abuse assault against H.K.H., we affirm.

I. Background Facts & Proceedings.

H.K.H. filed a petition for relief from domestic abuse following an August 15, 2011 altercation with her estranged husband, S.E.H. According to H.K.H.'s version of events, S.E.H. confronted her while she was sitting in the driver's seat of her parked car. The undisputed evidence admitted at a hearing on H.K.H.'s petition indicates S.E.H. reached into H.K.H.'s car in an attempt to grab the car keys and a bag H.K.H. was holding between her legs. H.K.H. resisted, and in the ensuing tug of war over these items, S.E.H. grabbed and/or struck H.K.H.'s arms causing welts and bruises on her left arm. The trial court found this evidence sufficient to justify entry of a final protective order.

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.

As already noted, S.E.H. contends there is insufficient evidence in the record to support a finding that he had the specific intent to commit an assault, as defined in section 708.1. He claims the court found his testimony was more credible than that of H.K.H. S.E.H. asserts that on appeal we should give more weight to his version of the events, and on this basis, determine there was insufficient evidence of specific intent.

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. Assault under section 708.1 includes "[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." Iowa Code § 708.1(2).

Assault under section 708.1 includes an element of specific intent. *State v. Fountain*, 786 N.W.2d 260, 266 (Iowa 2010). The court may infer intent from the normal consequences of a party's actions. *State v. Evans*, 671 N.W.2d 720, 724-25 (Iowa 2003). "Intent is a state of mind; it may be established by circumstantial evidence and by inferences drawn from that evidence." *State v. Nance*, 533 N.W.2d 557, 562 (Iowa 1995).

We do not agree with S.E.H.'s assertion that the district court found him to be more credible than H.K.H. Instead, we believe the district court's factual findings show that based on S.E.H.'s own testimony he committed domestic abuse assault. In any event, we are not bound by the district court's credibility findings, although we give them careful consideration. See *Wilker*, 630 N.W.2d at 594. We do not adopt S.E.H.'s suggestion that we confine our consideration of the case to the facts presented in his testimony.

On our de novo review of all of the evidence presented in this case, we determine a preponderance of the evidence shows S.E.H. had the specific intent required to commit an assault under section 708.1. We may infer intent from S.E.H.'s actions. See *Evans*, 671 N.W.2d at 724-25. Although H.K.H. had the bag on the floor of the car between her feet, and obviously did not want S.E.H. to take it, he reached in through the driver's side window and pulled it up from between her legs. We do not find credible S.E.H.'s testimony that somehow he did this without touching H.K.H. or that he did not know H.K.H. could be injured by him pulling on the bag this way.

We agree with the district court's conclusion, "Defendant had to have known this act would cause at least indirect physical contact with the Plaintiff that would be insulting and offensive, if not injurious and painful." We affirm the issuance of the final domestic abuse protective order.

AFFIRMED.