

IN THE COURT OF APPEALS OF IOWA

No. 3-067 / 12-1035
Filed March 13, 2013

PAULA SHIMER,
Petitioner-Appellee,

vs.

SHAWN KROMMINGA,
Respondent-Appellant.

Appeal from the Iowa District Court for Union County, Sherman W. Phipps, Judge.

Shawn Kromminga appeals from the district court's determination that he committed domestic abuse assault. **AFFIRMED.**

Michelle Mackel-Wiederanders of Iowa Legal Aid, Des Moines, for appellant.

Scott D. Fisher of Fisher Law Firm, P.C., West Des Moines, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Shawn Kromminga appeals from the district court's issuance of a permanent protective order against him in favor of Paula Shimer. He contends insufficient evidence was presented to support the issuance of the protective order. We affirm, finding sufficient evidence existed to support the finding of domestic abuse.

I. Facts and Proceedings.

Paula Shimer and Shawn Kromminga were involved in a domestic relationship until approximately January 2012. During and after the relationship Kromminga exhibited aggressive or harassing behavior. Shimer filed a petition for relief from domestic abuse on April 13, 2012. The same day, the court issued a temporary protective order. April 27, 2012, the court held a hearing to decide if a final protective order should be issued.

At the protective order hearing, the court received testimony from Shimer and Kromminga. The court also heard testimony from four other witnesses on behalf of Shimer who were friends, coworkers, or neighbors who had witnessed Kromminga's behavior towards Shimer.

Shimer testified that Kromminga would circle her house or work, at times shouting obscenities from his vehicle. She testified to several vehicle-related incidents: that he once threw a can partially filled with soda at her as she drove, hitting her vehicle; that he swerved at her vehicle on a highway as she drove; that he vandalized her vehicle; and that she was afraid of him, and carried a bat with her to her vehicle. The day of the hearing, she reported that while walking to the courthouse, Kromminga quickly drove over the curb adjacent to where she

was walking and came “really close to hitting [her].” The four other witnesses reported similar incidents. Two verified that Kromminga had, that day, driven over the curb in front of Shimer and almost hit her. Kromminga testified he had never injured Shimer, and while he did drive up onto the curb in front of her, he did not intend to hit her. The district court found Kromminga had engaged in domestic abuse assault and entered a protective order. Kromminga appeals, arguing substantial evidence did not exist to support the district court’s finding.

II. Analysis.

A. Standard of Review.

The parties disagree as to what standard of review should be applied in this case. Our review depends on the mode of trial in district court; if a protective order hearing is tried as an equity case, our review is de novo. *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). Where a district court rules on objections as they are made, however, the case is tried as a law action and our review is instead at law. *Bacon ex rel Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997). The district court ruled on objections as they were made. Our review is therefore at law. *See id.* “In a law action the district court’s findings of fact are binding upon us if those facts are supported by substantial evidence. Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings.” *Id.* (internal citations omitted).

B. Sufficiency of the Evidence.

Iowa Code section 236.2 (2011) defines “domestic abuse” in relevant part as:

2. “Domestic abuse” means committing assault as defined in section 708.1 under any of the following circumstances:

...

e. (1) [t]he assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault.

Kromminga agrees he and Shimer were in an intimate relationship and had contact within the past year. He argues that the evidence was insufficient to prove he committed an assault. Iowa Code section 708.1 (2) defines assault as “[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.” The record contains testimony describing Kromminga’s actions which put Shimer in fear of physical contact coupled with the apparent ability to complete the action.

“[C]hapter 236 is protective rather than punitive in nature.” *Christenson v. Christenson*, 472 N.W.2d 279, 280 (Iowa 1991). In *Christianson*, our supreme court found a car chase constituted domestic abuse under section 236.2(2). *Id.* The court concluded the former husband’s vehicle reached close proximity of the former wife’s vehicle, and thus the former husband had the apparent ability to strike her vehicle and a collision would “clearly be an act intended to cause [the former wife] pain or injury, or to place her in fear of painful or injurious contact.” *Id.* at 280–81.

We find the district court’s determination that Kromminga committed domestic abuse is supported by substantial evidence. See *Bacon*, 567 N.W.2d at 417.

AFFIRMED.