

IN THE COURT OF APPEALS OF IOWA

No. 3-555 / 12-1933
Filed August 21, 2013

**DAWN WEGMAN, On behalf of W.W.,
Child,**
Plaintiff-Appellant,

vs.

WILLIAM WEGMAN,
Defendant-Appellee.

Appeal from the Iowa District Court for Chickasaw County, Monica L. Ackley, Judge.

Dawn Wegman, on behalf of her child, appeals from the district court's dismissal of her petition for relief from domestic abuse filed on behalf of the parties' son against his father. **AFFIRMED.**

Roger L. Sutton of Sutton Law Office, Charles City, for appellant.

William P. Wegman, New Hampton, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

POTTERFIELD, J.

Dawn Wegman, on behalf of her child W.W., appeals from the district court's dismissal of her petition for relief from domestic abuse. She argues dismissal was improper. We affirm finding Iowa Code chapter 236 does not apply to petitions for relief from domestic abuse by a parent on behalf of a child against the child's other parent.

I. Facts and Proceedings.

Dawn filed a petition on behalf of W.W. for relief from domestic abuse under Iowa Code chapter 236, alleging a fight between W.W. and his father became physical. The district court dismissed the petition without hearing, finding "Chapter 236 of the Code of Iowa does not contemplate actions between parents and their children. The Department of Human Services has exclusive jurisdiction in cases such as these where abuse is alleged." Dawn retained counsel, who filed a motion to enlarge or amend. This motion requested the basis for the dismissal. The district court, in ruling on Dawn's motion, reiterated its prior ruling and referenced *D.M.H. by Hefel v. Thompson*, 577 N.W.2d 643 (Iowa 1998) and our unpublished opinion of *P.M. on behalf of D.H. v. R.H.*, No. 03-2059, 2004 WL 1899919 (Iowa Ct. App. August 26, 2004). Dawn appeals from this ruling, arguing the court was required to hold a hearing on her petition.

II. Analysis.

We review the dismissal of this action on the pleadings for the correction of errors at law. Iowa R. App. P. 6.907; *Thompson*, 577 N.W.2d at 644.

In *Thompson*, our supreme court engaged in a lengthy analysis of whether Chapter 236 as then recently amended was applicable to children of the

household who are under the age of eighteen. *Thompson*, 577 N.W.2d at 644-647. The court concluded:

The amendments [to Chapter 236], however, extend no right of action to children under age eighteen who witness domestic abuse between family or household members. Again this is because domestic abuse can only occur between family and household members and the law expressly excludes from the definition of family or household members children of this class. Children who witness domestic abuse between family or household members are clearly within this exclusion. This, however, does not mean that these children have no protection against domestic abuse.

Id. at 646. The court goes on to detail the responsibilities of child protective service workers and department of human services workers. Dawn argues her petition is distinguishable because the claim is regarding a physical altercation *with the child* as opposed to witnessing abuse. This argument is without merit; the statute expressly excludes children of family or household members from the Chapter 236 protected class. Iowa Code section 236.2(4) defines “Family or household members” for the purposes of domestic abuse as: “a. . . . spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity. b. [this term] does not include children under age eighteen of persons listed in paragraph ‘a.’” The child is not a qualified petitioner for relief from domestic abuse. We affirm the district court’s dismissal of the action.

William requests we impose a sanction on Dawn’s attorney for this frivolous appeal and tax her with costs on appeal. We have previously imposed sanctions where the appellant’s intent is to “utilize the Iowa court system for an improper purpose.” *In re Estate of DeTar*, 572 N.W.2d 178, 182 (Iowa Ct. App. 1997); *see also Russell v. Sioux City Gas & Elec. Co.*, 255 N.W. 504, 506 (Iowa 1934) (declining to award sanctions where appeal was not shown to be taken in

bad faith). While we agree with William that the appeal was frivolous, that some of the facts were misrepresented, and that bad faith could be implied, the record on appeal is not sufficient for our court to find Dawn took her appeal with the intent to utilize the Iowa court system for an improper purpose. See *DeTar*, 572 N.W.2d at 182. We therefore decline William's request for sanctions. We do, however, tax costs against Dawn on appeal.

AFFIRMED.