

**IN THE COURT OF APPEALS OF IOWA**

No. 3-764 / 12-2201  
Filed August 21, 2013

**TAMMIE L. WOLTERS,**  
Plaintiff-Appellee,

**vs.**

**MONTE C. WOLTERS,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Floyd County, Colleen D. Weiland,  
Judge.

Monte Wolters appeals from the issuance of a final domestic abuse  
protection order against him. **AFFIRMED.**

Gary Papenheim, Parkersburg, for appellant.

Evelyn Ocheltree of Iowa Legal Aid, Mason City, for appellee.

Tammie Wolters, Rudd, IA, appellee pro se.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**POTTERFIELD, P.J.**

Monte Wolters appeals from the issuance of a final domestic protection order against him in favor of his former wife, Tammie Wolters. He argues sufficient evidence did not support the finding of domestic abuse. We affirm, finding sufficient evidence to show that Monte committed domestic abuse.

**I. Facts and proceedings.**

Tammie and Monte were married until a dissolution decree was filed in November of 2011. They have two children who were visiting with Monte when the disagreement leading to the protective order began, culminating in an altercation when he returned the children on Sunday, October 28, 2012. Tammie's friend, Bradley Gentz, drove her to meet Monte for the exchange at a local gas station. Gentz and Monte had been communicating by text message and phone during the previous evening while Gentz and Tammie were together in a social situation; the exchanges between Gentz and Monte were provocative. This resulted in threatening text messages sent from Monte to Tammie's phone but directed to Gentz. At the time of the exchange of the children, Monte pulled in to the parking lot very quickly, slamming the vehicle into park. He began screaming and cursing at Tammie and Gentz to get out of the car. Monte also pounded on the driver's window where Gentz was sitting with a gun visible in his lap, and tried to open Gentz's door.

Tammie left the vehicle to retrieve the children from Monte's car while Monte screamed at them to stay put. Once the children were in her vehicle, she locked the door and Gentz attempted to leave; however, Monte stood in front of

the vehicle to prevent their departure. Monte called law enforcement, and the parties were interviewed by deputies the following day.

Tammie filed a petition for relief from domestic abuse on October 29, 2012, and requested a protective order be entered against Monte to prevent him from contacting her or coming near her at work or home. Her description of “the most recent injury” on the petition form was a description of the events of the visitation exchange; she included in “any other injuries” several events during her marriage with Monte, the most recent of which occurred just over a year prior. A temporary protective order was entered, and a hearing was held in November.

Tammie and Monte testified at the hearing, as did Monte’s wife and Gentz. In addition to the October 2012 incident, Tammie testified to incidents of violence between her and Monte during their marriage, including him pinning her in a corner, putting his hands around her throat, punching through the bathroom door, and throwing a glass of milk at her head. Monte admitted to the bathroom door and glass of milk incidents though he claimed to be aiming the glass of milk at the wall behind her head. Monte also testified that his recent behavior was in response to Gentz pointing a gun at him. Tammie and Gentz admitted Gentz had a gun, but contended that he never pointed it at Monte. The court entered a final domestic abuse protective order to remain in effect for one year. The court noted it made credibility findings in favor of the protected party, there were assaults in prior incidents, and there was a continuing threat to safety as demonstrated by ongoing communications. Monte appeals.

## II. Analysis.

This case was heard in equity; therefore our review of this appeal challenging the sufficiency of the evidence in a civil domestic abuse case is de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001) (citing *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994)).

Monte claims no assault occurred between him and Tammie to support a finding of domestic abuse.

To establish domestic abuse under Iowa Code chapter 232, a plaintiff must prove an assault as defined in Iowa Code section 708.1. Iowa Code § 236.2(2). Assault can be committed in several ways. The two alternatives most pertinent to the facts here provide:

A person commits an assault when, without justification, the person does any of the following:(1) Any 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) Any 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.

*Bacon on Behalf of Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997) (quoting Iowa Code §§ 708.1(1), 708.1(2)).

‘We note initially that chapter 236 is protective rather than punitive in nature. We place upon the statute ‘a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it.’ *Christenson v. Christenson*, 472 N.W.2d 279, 280 (Iowa 1991) (quoting *Shidler v. All Am. Life & Fin. Corp.*, 298 N.W.2d 318, 321 (Iowa 1980)). Civil domestic abuse proceedings are less formal than criminal proceedings and often include past along with recent allegations of abuse. *Knight*, 521 N.W.2d at 843.

The court credited Tammie's testimony and found she had proved her claim for injunctive relief by a preponderance of the evidence; we defer to the court's credibility finding. *Wilker*, 630 N.W.2d at 596. Monte had a history of abuse against Tammie; most recently he pounded on her vehicle and attempted to prevent her from leaving with the children. In April 2014—a year and a half earlier—Monte had put his hands around her throat. In February 2011, he threw a glass of milk at her head. While a petition for a protective order must allege an assault that is not remote in time to justify the issuance of a protective order, a prior history of domestic abuse assaults by the respondent against the petitioner is relevant to proof of the recent assault, as was the case here. Contrary to Monte's argument, this is not a case where domestic abuse was based on conduct not included in the pleadings. *Knight*, 525 N.W.2d at 843-44. The events during the marriage were described in detail in the handwritten addendum to Tammie's petition, and Monte was prepared to meet those allegations. We decline to adopt the narrow construction of our statute advocated by Monte, which would disallow protection based on the passage of time under these circumstances. See *Christenson*, 472 N.W.2d at 280 (stating we reasonably or liberally construe this statute to effect its protective purpose). We find the district court properly determined there was a preponderance of the evidence to support a finding of assaultive conduct. See Iowa Code 236.4(1)(2011).

**AFFIRMED.**