

IN THE COURT OF APPEALS OF IOWA

No. 6-461 / 05-1785

Filed July 12, 2006

ANGELA L. SALADINO,
Plaintiff-Appellee,

vs.

DONALD W. HARMS,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Mark J. Smith,
Judge.

Donald Harms appeals from the district court's grant of Angela Saladino's
petition for relief from domestic abuse. **AFFIRMED.**

Dennis D. Jasper of Stafne, Lewis, Jasper & Preacher, Bettendorf, for
appellant.

James D. Ottesen, Davenport, for appellee.

Angela Saladino, Long Grove, pro se.

Considered by Mahan, P.J., and Hecht and Eisenhauer, JJ.

EISENHAUER, J.

Donald Harms appeals from the district court's grant of Angela Saladino's petition for relief from domestic abuse. He contends: (1) the district court erred in entering a final domestic abuse protective order restraining him from having contact with Saladino because he did not have sufficient notice of the "charge" against him, and (2) there was insufficient evidence showing he committed domestic abuse. We review these claims de novo. Iowa R. App. P. 6.4.

Harms and Saladino were involved in an extramarital affair. Saladino filed a pro se petition for relief from domestic abuse on September 21, 2005, alleging Harms had threatened her and she was in fear for her physical safety. Under paragraph 10a, where she was to describe the most recent injury or threat, Saladino wrote:

9-21-05- Drive by following me from work around town. Had confrontation on 9-20-05 – told me he was going to fuck with my husband's mind. Told me he's had all sorts of thoughts going thru [sic] his mind that I don't want to know. Left message on answering machine. Drives by work place lots during day.

Under paragraph 10b, where she was to describe other injuries or threats received from Harms, she wrote:

Has left cards on my door at work. Sits down street waiting for me.

Husband – called today 9-21-05 on home phone. Came to our home about 12:10 p.m. Left and called from cell phone to house 4 times. Proceeded to tell things about my wife and him. Offered money to leave wife. Tony told him to shove his money, he responded that he will take wife and girls away from me. Went to my place of business and left video and tell I was to watch with wife. Said this is not over.

(Wife) Came to my business 2 weeks ago and stormed into salon. How could I be doing this to him. Your [sic] being held hostage.

Harms was served the petition and temporary order on September 24, 2005.

Trial was held on September 28, 2005, with both parties representing themselves. During her testimony, Saladino related the events of September 20:

September 20, I pulled into the gas station across from my business. He pulled in, raging, how can I be doing this? How it would not go down the way that he said. He told me that he knew the law and there was no way that my husband could take my kids from me. I told him to leave my salon. We went to my work, and he stormed in there, raging, into my work, and just went of, glaring at me. And I told him to move on with his life. And I was sitting behind the desk. He reached over, grabbed my arm, and stormed out of the salon. That day he still drove by. I have the times he's driven by.

Harms testified that during the incident in question, he placed his hand on top of hers, said he loved her, lifted his hand, and left the salon. The court used this event to find an assault took place warranting the issuance of a protective order.

In its ruling, the court stated:

The Court finds that based on the requirements of Chapter 236 an assault must take place. An assault is defined as any physical contact which would be insulting or offensive to another. The testimony indicates that there was an unprivileged touching by Mr. Harms with Miss Saladino at her place of business. Therefore, that portion of the Code is fulfilled. The Court further finds that the parties had an intimate relationship within one year of the alleged assault and, therefore, finds that a final domestic protective order should be issued and will issue that today.

Harms first contends he did not have proper notice of the "charge" against him because paragraph ten of Saladino's application did not set forth a single threat or injury, or otherwise allege he assaulted her. We disagree.

Actions under chapter 236 are civil in nature and the procedure is governed by the rules of civil procedure. Iowa Code § 236.7 (2005). Under Iowa's notice pleading, the petition need not allege ultimate facts that support each element of the cause of action. *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). The petition, however, must contain factual allegations that

give the defendant "fair notice" of the claim asserted so the defendant can adequately respond to the petition. *Id.* A petition complies with the "fair notice" requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature. *Id.* Saladino's petition complied with the fair notice requirement; it alleged domestic abuse and specifically mentioned a "confrontation" that took place on September 20, 2005. A pleading need not raise ultimate facts to raise or preserve a claim. *Weyerhaeuser Co. v. Thermogas Co.*, 620 N.W.2d 819, 831 (Iowa 2000).

Notice under Iowa notice-pleading rules may not amount to constitutional due process when significant fundamental interests are at stake. *Wilker v. Wilker*, 630 N.W.2d 590, 595 (Iowa 2001). Harms alleges a fundamental interest in his right to keep and bear arms was lost when he was found to have committed domestic abuse. However, our supreme court has found that the mere fact a fundamental right may be indirectly impacted by a finding of domestic abuse does not require a more stringent notice rule for actions arising out of Iowa Code chapter 236. *See id.* at 595-96 (holding that although any adjudication of domestic abuse may have a potentially negative effect on past, present, or future custody or visitation disputes, greater due process is not warranted). Here, we conclude any adverse impact on Harm's right to keep and bear arms is an indirect consequence of a finding of domestic abuse. We then consider whether there is a fundamental interest at risk in the dispute before us and find there is not; there is no deprivation of a fundamental, constitutionally protected interest when ordered to cease domestic abuse of another. *Id.* at 595. The contents of Saladino's petition provided sufficient notice to Harms of her allegations.

Harms next contends there was insufficient evidence that he committed an assault. A person commits assault when, without justification, he or she commits an act intended to cause pain or injury to another person, or is intended to result in an insulting or offensive physical contact with another. Iowa Code § 708.1(1). Saladino's burden of proof is by a preponderance of the evidence. Iowa Code § 236.3. Saladino testified Harms grabbed her arm. Such unwanted actions are offensive physical contact. Although Harms disputes Saladino's account of the incident, the district court was free to reject his version of events and accept Saladino's. Although we are not bound by the district court's fact findings, we give them weight, especially when considering the credibility of witnesses. Iowa R. App. P. 6.14(6)(g). We give weight to the trial court's determination of whom to believe and conclude Saladino has proven she was assaulted.

AFFIRMED.