

**IN THE COURT OF APPEALS OF IOWA**

No. 6-789 / 06-0555  
Filed October 11, 2006

**JONI PIERSON,**  
Plaintiff-Appellee,

**vs.**

**MATTHEW MULLENIX,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

Matthew Mullenix appeals from the district court's issuance of a domestic  
abuse protection order. **REVERSED AND REMANDED.**

David A. Morse of Rosenberg, Stowers & Morse, Des Moines, for  
appellant.

Joni Pierson, Waukee, pro se.

Considered by Vogel, P.J., and Miller and Eisenhauer, JJ.

**EISENHAUER, J.**

Matthew Mullenix appeals from the district court's issuance of a domestic abuse protection order. He contends there was insufficient evidence to show he committed domestic abuse. He also contends the court improperly acted as an advocate for a pro se litigant. Our review is de novo. *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994).

A petition for relief from domestic abuse was filed by Joni Pierson under Iowa Code section 236(2)(d) (2005). Domestic abuse occurs when an assault takes place between persons who have been in an intimate relationship and have had contact within the past year of the assault. Iowa Code § 236.2(2)(d). There is no question the relationship existed within the year preceding the allegations. A person commits assault when, without justification, they do 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.
3. Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon toward another.

Iowa Code § 708.1.

We conclude there is insufficient evidence to show Mullenix assaulted Pierson. The only acts alleged by Pierson in support of her petition for relief from domestic abuse are a series of phone calls in which Mullenix stated, "You're going to pay for this" or "You're going to get it." A mere threat, without more, is not necessarily an assault by placing another in fear. *State v. Law*, 306 N.W.2d

756, 759 (Iowa 1981), *overruled on other grounds by State v. Wales*, 325 N.W.2d 87 (Iowa 1982). “It is well settled that mere words, even at short range, do not constitute an assault. The fact that the words were spoken over the telephone line would of itself quite negative the theory of assault.” *Kramer v. Ricksmeier*, 159 Iowa 48, 51, 139 N.W. 1091, 1091 (Iowa 1913) (citations omitted). We reverse the protection order and remand for dismissal of the petition for relief from domestic abuse. Accordingly, we need not consider Mullenix’s other claim on appeal.

**REVERSED AND REMANDED.**