

IN THE COURT OF APPEALS OF IOWA

No. 6-879 / 06-0920
Filed December 28, 2006

JESSIE LOUISE CLARK,
Plaintiff-Appellant,

vs.

JAMES MATTHEW DAU,
Defendant-Appellee.

Appeal from the Iowa District Court for Scott County, David Schoenthaler,
Judge.

Plaintiff appeals following the district court's denial of her request for a
permanent protective order. **AFFIRMED.**

James L. Ottesen, Scott County Domestic Abuse Special Prosecution
Program, Davenport, for appellant.

Matthew A. Leddin of Gallagher, Millage & Gallagher, P.L.C., Davenport,
for appellee.

Heard by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Jessie Clark appeals following the district court's denial of her request for a permanent protective order. We affirm the district court.

I. Background Facts and Proceedings.

Jessie Clark and James Dau are the unmarried parents of two children. On May 17, 2006, Clark filed a petition for relief from domestic abuse pursuant to Iowa Code chapter 236 (2005). She alleged that on the morning of May 11, 2006, Dau took car keys away from her while she was trying to leave the residence they shared and in the process cut her hand with the keys. She further alleged that "there was pushing"; that Dau removed her glasses from her face and broke them; and that he threatened any men she might start dating. Clark also claimed Dau had assaulted her on prior unspecified occasions.

After reviewing Clark's petition, a judge entered a temporary protective order restricting Dau's contact with Clark and granting Clark temporary custody of the parties' children. On May 24 a hearing was held to determine whether a permanent protective order should be issued. Clark and Dau were the only witnesses who testified at the hearing.

Clark testified that Dau had been abusive on a number of occasions during their three-year relationship. She admitted she had shoved Dau on prior occasions, thrown a bottle at him, and struck him in the face; however, she claimed she had only done so in order to defend herself after "he had been violent towards" her.

Clark testified she and Dau were fighting on May 11, 2006. She claimed Dau grabbed her and pulled out "a bunch" of her hair, and took off her glasses

and broke them. Clark stated she had never called the police to report being assaulted by Dau. Clark testified that she was afraid of Dau and was concerned he would harm her and their children.

Dau denied Clark's allegations of physical abuse. He testified that on the morning of May 11 he and Clark had a verbal argument. According to Dau, Clark was holding keys to a vehicle owned by Dau but used by Clark. Dau asked Clark for the keys several times, but Clark refused. Dau then took hold of a rope which was attached to the key chain and pulled the keys out of Clark's hand. Dau stated Clark then threw a candle at him. He testified Clark then came at him and hit him in the face twice. Dau claimed that he then pushed Clark away and told her to take the car keys and the children and leave.

Dau also specifically denied a prior allegation of physical abuse testified to by Clark. He stated Clark abused him on that occasion by throwing a bottle at him, pushing him, and attempting to hit him. Dau asserted he did no more than push Clark away when it was necessary to protect himself from her assaultive behavior.

The district court concluded that Clark had failed to meet her burden of proving domestic abuse. The court found the parties had a "tumultuous" relationship. Noting it had to make a credibility finding, the court stated that, after observing both parties, it "can't find that [Dau] isn't credible." The court cancelled the temporary protective order and dismissed Clark's petition.

Clark appeals. She asserts the court erroneously denied a permanent protective order because it determined the abuse was mutual, and moreover that it ignored "clear and credible evidence that the defendant committed domestic

abuse assault and poses a present threat to the plaintiff.” Dau asserts that Clark’s request for a permanent order was properly denied. He also contends Clark’s appeal is not properly before us because it was brought by the Scott County Attorney’s Office which has no authority to appeal on Clark’s behalf.

II. Scope and Standard of Review.

We conduct a de novo review of this equitable proceeding. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). Although we are not bound by them, we give weight to the district court court’s fact findings, especially as they relate to witness credibility. Iowa R. App. P. 6.14(6)(g).

III. Discussion.

Before we turn to the merits of the district court’s decision, we address Dau’s contention that the Scott County Attorney’s Office lacks authority to pursue an appeal on Clark’s behalf. Iowa Code section 236.3B provides,

A county attorney’s office may provide assistance . . . to a plaintiff at any stage of a proceeding under this chapter, if the individual does not have sufficient funds to pay for legal assistance The assistance provided may include, but is not limited to, assistance in obtaining or completing forms, filing a petition or other necessary pleading, presenting evidence to the court, and enforcing the orders of the court entered pursuant to this chapter.

Dau asserts section 236.3B does not provide the Scott County Attorney’s Office authority to bring this appeal because (1) Clark has sufficient funds to pay for appellate counsel and (2) section 236.3B does not extend to appeals.

In support of his first contention, Dau points to the fact that Clark was represented by private counsel during the hearing before the district court. The record is silent as to Clark’s former or current financial status, and whether private counsel charged a fee for her services or represented Clark on a pro

bono basis. Absent more, Dau's assertion regarding Clark's financial status is bare supposition, and not a sufficient basis for declining to hear her appeal.

In support of his second contention, Dau points out that section 236.3B does not expressly authorize a county attorney's office to represent an indigent defendant on appeal. It does, however, permit the office to represent a plaintiff "at any stage of a proceeding," and states that the forms of assistance the office may provide are not limited to those specifically listed. When the statute is viewed as a whole, it does not appear that a county attorney's office is precluded from pursuing an appeal on a plaintiff's behalf. Whether the present appeal is authorized by section 236.3B is of little import in the current matter, however, because, upon our de novo review, we agree Clark failed in her burden of proof.

As the party seeking the order of protection, Clark was required to prove, by a preponderance of the evidence, that Dau committed domestic abuse against her. Iowa Code § 236.4(1). Domestic abuse is defined, in relevant part, as "committing assault as defined in section 708.1" when "[t]he assault is between persons who are parents of the same minor child" An assault occurs

when, without justification, [a] 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.

Iowa Code § 708.1.

We agree with Clark that her version of events, if believed, is sufficient to constitute domestic abuse assault. However, the district court weighed the

credibility of the parties, and found Dau was credible in his denials and assertions. In cases such as this, which turn wholly on the credibility of the parties, we give weight to the district court's credibility assessments, particularly as it had an opportunity to observe the witnesses first hand. Contrary to Clark's assertion on appeal, we do not believe the district court denied her petition because it found the parties were mutually abusive. Rather, it appears the court simply did not believe that Clark had met her burden of proof.

Upon our review of the record, and giving due weight to the court's assessments of credibility, we conclude that Clark has failed to demonstrate her allegations of domestic abuse by Dau. We accordingly affirm the district court's cancellation of the temporary protective order and denial of Clark's request for a permanent protective order.

AFFIRMED.