

IN THE COURT OF APPEALS OF IOWA

No. 7-034 / 06-1055
Filed March 28, 2007

LISA THIELMAN,
Petitioner-Appellee,

vs.

RICHARD P. THIELMAN,
Respondent-Appellant.

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

Richard Thielman appeals from the district court's decision finding he
committed a domestic abuse assault under Iowa Code chapter 236 (2005).

AFFIRMED.

Jeanne Johnson, Des Moines, and Deborah McKittrick, Ankeny, for
appellant.

Laura Lockard of Iowa Legal Aid, Des Moines, for appellee.

Considered by Zimmer, P.J., and Miller and Baker, JJ.

ZIMMER, P.J.

Richard Thielman appeals from the district court's entry of a domestic abuse protective order following a hearing held on a petition for relief from domestic abuse filed by his former spouse, Lisa Thielman. He contends the evidence was not sufficient to prove he committed civil domestic abuse under Iowa Code chapter 236 (2005).

Richard and Lisa were divorced in June 2005. They share custody of their son, Erich. The parties have had some disagreements while transferring physical care of their son. As a result, they exchange custody of Erich at the Ankeny police station instead of their homes.

On April 25, 2006, Lisa filed a petition for relief from domestic abuse based on an incident that occurred at the police station two days earlier during an exchange of custody. She alleged Richard had threatened her and she feared for her physical safety. A district court judge granted Lisa a temporary protective order and scheduled a hearing to determine whether the order should be made permanent.

The court held a hearing on the petition on May 8. Lisa testified that during the exchange of custody on April 23, she asked Richard to stop sending her harassing e-mails. Lisa claimed Richard said, "it wouldn't stop and that if he heard of myself or my girlfriend swatting my son on the butt, that he would come after us." According to Lisa, Richard "puffed out his chest and he was spitting through his teeth and bumped [her] with his chest." In a police report about the April 23 incident, Lisa noted Richard called her offensive names and "was extremely intimidating, laughing at me crying and shaking." Richard provided the

court with a different version of events. He testified the only e-mails he sent to Lisa regarded the welfare of their son. Richard said Lisa threatened to file a harassment complaint. According to Richard, he replied, “[g]ood luck with that,” and then left. Richard claimed he never touched Lisa at the police station, and he denied there had ever been any abuse during his relationship with Lisa.

At the close of the hearing, the district court concluded Richard had committed a chapter 236 domestic assault, and the court entered a protective order. Richard filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), which the district court denied. Richard has appealed. He contends Lisa did not meet her burden of proving domestic abuse because her testimony was not credible.

The parties disagree on the scope of review. Lisa contends we should review the district court’s ruling de novo because this is an equitable action. See *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). Richard claims the proper scope of review is for the correction of errors at law because the district court tried this case as a law action and ruled on objections as they were made. See *Bacon on Behalf of Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997). Because the record suggests the district court tried this case as a law action, we will review this matter for correction of errors at law.¹ The trial court’s findings of fact in a law action are binding on the appellate court if they are supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). Evidence is substantial if

¹ We note our resolution of this case would remain unchanged under a de novo scope of review.

reasonable minds could accept it as adequate to reach the same findings. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996).

In a proceeding brought under chapter 236, the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence. Iowa Code § 236.4(1). For the purposes of chapter 236, domestic abuse is defined as “committing assault as defined in section 708.1.”² *Id.* § 236.2(2). In this case, the district court found Lisa’s version of events was credible and concluded the evidence she presented was sufficient to establish domestic abuse under the controlling statute.

Upon our review of the record, we conclude substantial evidence supports the trial court’s decision. In addition to Lisa’s testimony, the court heard evidence that indicated Lisa’s current partner had observed Richard engage in similar behavior on at least one occasion in the past. The court found this testimony credible. The court was also presented with a number of e-mails and a lengthy letter written by Richard. The letter was written about eight months prior to the incident at the police station. It is very hostile in tone and sheds some light on the nature of the parties’ relationship. We conclude this evidence is sufficient to establish domestic abuse. In reaching this conclusion, we acknowledge the district court, as trier of fact, has a better opportunity to evaluate the credibility of

² Iowa Code section 708.1 defines assault:

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.

witnesses than we do. *Tim O'Neill Chevrolet*, 551 N.W.2d at 614. We reject Richard's claim that the court committed reversible error in finding Lisa's testimony credible under the record in this case. We affirm the district court's determination that domestic abuse occurred and its entry of a permanent protective order.

AFFIRMED.