

IN THE COURT OF APPEALS OF IOWA

No. 7-058 / 06-0182
Filed February 28, 2007

LISA A. HOBBS,
Plaintiff-Appellant,

vs.

**IOWA DISTRICT COURT
FOR WARREN COUNTY,**
Defendant-Appellee.

Appeal from the Iowa District Court for Warren County, Darrell Goodhue,
Judge.

Certiorari proceeding reviewing district court's ruling on a chapter 236
domestic abuse petition. **WRIT SUSTAINED; REMANDED FOR FURTHER
PROCEEDINGS.**

Nancy Lynn Robertson of the Iowa Coalition Against Domestic Violence,
Des Moines, for appellant.

Louis M. Fusco, Indianola, for Skylar Hobbs.

Considered by Sackett, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

Lisa Hobbs filed this petition for writ of certiorari from the district court's ruling on her chapter 236 domestic abuse petition. She claims the court erred when it found her petition moot and, without her consent, adopted a no-contact order identical to a no-contact order in a related criminal complaint. We sustain the writ, vacate the order, and remand for further proceedings.

I. Facts and Prior Proceedings

On October 29, 2005, Lisa reported to the police that her husband, Skylar, lunged at her and spit in her face. Based on her statement, Hobbs was arrested and charged with simple domestic abuse assault. Pursuant to this charge, the court entered a criminal no-contact order on November 4, 2005. This order was modified twice, without prior notice to Lisa, to allow Skylar phone contact with their children and to allow him to attend their school activities.

On December 20, 2005, Lisa filed a chapter 236 civil petition for relief from domestic abuse. Lisa based her request for the civil protection order on the aforementioned incident, an incident in July 2005 where Skylar slammed her into a wall, a previous threat that Skylar was going to shoot her, and an unspecified allegation of sexual abuse. Lisa also alleged that guns were missing and she was now "in a higher state of fear." Lisa requested the court order Skylar to (1) stop the domestic abuse, (2) stay away from the family home, (3) stay away from her work or school, (4) give her temporary custody of the children, (5) give her financial support, (6) give her temporary possession of the family home, (7) take part in counseling, and (8) not contact her personally or through another person by telephone or writing. Several of these items, including the request for

financial support and the request that Skylar be ordered to participate in counseling, were not included in the criminal no-contact order.

The court issued a temporary civil protective order on December 20, 2005. On December 23, 2005, Skylar filed a motion to quash the temporary order, stating that Lisa “already has a remedy to modify the current no-contact order or to allege violations of the current order if that is her desire.” On the same day, the court issued an order modifying the protective order so that Skylar could contact his children by telephone.

The petition for relief from domestic abuse came before the court for hearing on December 28, 2005. Counsel for the parties met in chambers prior to the hearing. At the beginning of the hearing the court stated:

It appears that there is already a criminal stay-away order in this matter. I am not going to follow it with a second civil or Chapter 236 stay-away order which modifies or affects the terms of the criminal stay-away order. I will enter a stay-away order which adopts the stay-away order that’s existing in the criminal matter. I will not issue a new one that varies with the terms and conditions so no one knows where they’re at.

Lisa objected to the court’s proposed order. The court noted her objection but ended the hearing without receiving any evidence on her petition. The court then entered the following calendar entry order:

It is agreed that a stay away order protecting the plaintiff exists in SMAC108603. This proceeding is either an attempt to amend the existing stay away order or is more properly an issue to be raised as a contempt action in SMAC108603. To that extent, and because of the existing stay away order, the issues raised herein are moot. At plaintiff’s request the existing stay away order in the criminal matter is adopted herein and reasserted as if set out in full including any amendments thereto and any subsequent amendments. The Motion to Quash to that extent is denied.

Darrell Goodhue, Judge

On appeal, Lisa contends the district court had no jurisdiction to enter this order because it neither made a finding of domestic abuse nor obtained her agreement to enter a consent order. She also contends the court's action violated the mandatory hearing language of Iowa Code section 236.4 (2005) when it refused to have a hearing on her petition.

II. Standard of Review

Certiorari is an action at law; therefore, an appellate court's review is for correction of errors at law. *Halverson v. Iowa Dist. Ct.*, 532 N.W.2d 794, 797 (Iowa 1995). In a certiorari action, we may examine only the jurisdiction of the district court and the legality of its actions. *French v. Iowa Dist. Ct.*, 546 N.W.2d 911, 913 (Iowa 1996); Iowa R. Civ. P. 1.1401. Illegality exists when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law. *Sorci v. Iowa Dist. Ct.*, 671 N.W.2d 482, 489 (Iowa 2003).

III. Merits

Iowa Code section 236.5 provides that a court may (1) grant a protection order upon a finding that the defendant has engaged in domestic abuse or (2) grant a consent order based upon a consent agreement between the parties. *Stewart v. Stewart*, 687 N.W.2d 116, 117-18 (Iowa Ct. App. 2004). In this case, there was no consent agreement between the parties, and the court did not make a finding of domestic abuse.

The calendar entry order written by the district court states: "[A]t plaintiffs request the existing stay away order in the criminal matter is adopted herein and reasserted as if set out in full including any amendments thereto and any subsequent amendments." Our review of the record clearly indicates Lisa did not

request that the court enter a chapter 236 no contact order mirroring the no contact order entered in the criminal matter. When the court indicated its intention to enter such an order, she personally interrupted the court and objected.¹ We find no consent agreement here. See *id.* at 117 (“Under the plain language of [section 236.5], a consent order requires the agreement of the relevant parties.”).

One might conclude the court’s comments imply Lisa had to either accept identical orders or face a dismissal without further hearing. Such a proposition is erroneous. Iowa Code section 236.7(1) provides that “[a] proceeding under this chapter . . . is *in addition to* any other civil or criminal remedy.” (Emphasis added.) Criminal charges based on the same incident alleged in a domestic abuse petition should not result in a dismissal of the petition. Cf. *Conklin v. Conklin*, 586 N.W.2d 703, 706 (Iowa 1998) (“A defendant’s filing of a petition for dissolution of marriage does not deprive the district court of jurisdiction in a domestic abuse action, nor does it relieve the trial court of the responsibility to rule on the merits of the domestic abuse petition.”). Section 236.4 states a hearing “shall” be held “not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party.” The word “shall” in a statute “imposes a duty.” Iowa Code § 4.1(30)(a); see also *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000) (“The uniform rule seems to be that the word ‘shall,’ when addressed to public officials, is mandatory and excludes the idea of discretion.” (citations omitted)). While there are limited circumstances

¹ Even if we assume her counsel conceded to such an order in chambers, her own statements at the hearing unequivocally reject such a request.

in which a court may properly dismiss a domestic abuse petition without a hearing, see, e.g., *D.M.H. by Hefel v. Thompson*, 577 N.W.2d 643 (Iowa 1998) (concluding minor children who only witnessed domestic abuse between family members were not covered by chapter 236); *Livingood v. Negrete*, 547 N.W.2d 196 (Iowa 1996) (holding cellmates in prison were not cohabitants as defined in chapter 236), the court cannot do so solely because there is a related criminal no-contact order.

As there was no mutual consent by the parties and no finding of domestic abuse, we find it was not appropriate for the district court to enter a consent order. See *Stewart*, 687 N.W.2d at 117-18 (finding it inappropriate for court to enter a consent order when plaintiff did not consent to the order).

IV. Conclusion

Because the district court's order does not comply with chapter 236, we vacate the order and remand this matter for further proceedings not inconsistent with this opinion.

WRIT SUSTAINED; REMANDED FOR FURTHER PROCEEDINGS.