

IN THE COURT OF APPEALS OF IOWA

No. 7-643 / 06-1851
Filed September 19, 2007

DENISE COPE,
Petitioner-Appellee,

vs.

TIMOTHY VOLZ,
Respondent-Appellant.

Appeal from the Iowa District Court for Polk County, Robert J. Blink,
Judge.

Timothy Volz appeals from the entry of a permanent protective order
under Iowa Code chapter 236 (2005). **REVERSED.**

Karen Taylor of Taylor Law Offices, Des Moines, for appellant.

Denise Cope, West Des Moines, pro se.

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

SACKETT, C.J.

Timothy Volz appeals from the entry of a permanent protective order under Iowa Code chapter 236 (2005), based on a finding of domestic abuse. He contends the court abused its discretion in granting the order because there was no evidence of assault. We reverse.

This case was tried in the district court as a law action. The court ruled on objections as they were made. Therefore our review is for correction of errors at law. Iowa R. App. P. 6.4; *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994) (stating review is in accordance with the mode of trial in district court); see *Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997) (chapter 236 domestic abuse proceeding). In a law action the district court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings. *Land O'Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000).

To establish domestic abuse under Iowa Code chapter 236, a petitioner must prove an assault as defined in Iowa Code section 708.1. Iowa Code § 236.2(2). An assault can be committed in various ways. The alternative most pertinent to the facts here provides:

A person commits an assault when, without justification, the person does any of the following:

. . . .

(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.

Id. §§ 708.1(1), (2).

The parties' relationship had ended. Ownership and possession of a motorcycle was at issue. Volz wrote to Cope, demanding return of the

motorcycle. He went to her place of employment at least three times in an attempt to recover the motorcycle. At one point, Volz photographed a truck that accompanied Cope when she left work on the motorcycle. Cope sought and obtained a temporary protective order under Iowa Code chapter 236. Before the hearing two weeks later, Volz filed a replevin action, seeking possession of the motorcycle in dispute. The district court heard testimony from both parties and received as exhibits the demand letter and other documents. Cope testified she filed the petition because “he was using these methods to coerce me and to force me to give up the motorcycle so he would leave me alone.” She testified that Volz had not threatened to harm her physically.

After the close of evidence, the court found:

Well, I’m troubled by this situation. There is no evidence that any physical assault took place. The law requires that there be a certain relationship between the parties, and that certain actions take place, either physical abuse, sexual abuse, or threat of physical injury. Here the record clearly shows that the necessary relationship between the parties exists. There is no evidence of physical abuse. There is no evidence of sexual abuse.

I am concerned, however, about the manner and means in which an effort has been made to obtain this motorcycle. The record is clear there have been no direct threats of physical safety.

The court subsequently concluded:

So it’s a contract dispute. It is a dispute relating to the property which needs to be addressed in the courts, but I conclude that the repetitive, incessant, and persistent contact at Ms. Cope’s place of employment could be construed as a threat to her physical safety, especially when aligned with the photography.

Now, while I understand why that may have been done, I also conclude that viewed through the eyes of another, it might be considered threatening. So I’m going to enter a continued protective order

We conclude the district court erred in its application of the law to the facts in this case. The court found there was no physical abuse, sexual abuse, or

threats of physical abuse. The court did not find Volz did any act intended to place another in fear of immediate physical contact that would be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act. See Iowa Code § 708.1(2). Rather, it concluded his actions “could be construed as a threat to her physical safety” and “that viewed through the eyes of another, it might be considered threatening.” Iowa Code section 708.1 requires more. We conclude the district court erred in determining Volz committed domestic abuse as defined in section 236.2(2) and in issuing the protective order.

We therefore reverse the decision of the district court.

REVERSED.