

IN THE COURT OF APPEALS OF IOWA

No. 7-900 / 07-0201
Filed December 28, 2007

EMBERLY LASHLEY,
Plaintiff-Appellee,

vs.

ROY CHARRAN,
Defendant-Appellant,

Appeal from the Iowa District Court for Polk County, Carla T. Schemmel,
Judge.

Appeal from the issuance of a domestic abuse protective order.

REVERSED.

David A. Morse and Kristine M. Dreckman of Rosenberg, Stowers &
Morse, Des Moines, for appellant.

Emberly Lashley, Des Moines, pro se.

Considered by Sackett, C.J., Vaitheswaran and Baker, JJ.

SACKETT, C.J.

Defendant-appellant, Roy Charran, appeals from the issuance of a domestic abuse protective order based on a finding he committed assault under Iowa Code chapter 236 (2005). He contends the evidence does not support the court's finding of an assault and that the court, therefore, improperly issued the protective order. We reverse.

I. Background

Plaintiff and defendant were married from 2000 to 2002 and have a daughter who has been the object of repeated custody litigation since the dissolution of the parties' marriage. The litigation occurred in California, Missouri, and Iowa. Physical custody of the daughter has changed from plaintiff to defendant and back to plaintiff. Often custody litigation was pending, plaintiff sought and obtained no-contact orders against defendant based on allegations of domestic abuse. The most recent no-contact order was obtained in July of 2005 and expired on July 14, 2006. Plaintiff did not seek an extension of the order.

On October 19, 2006, defendant filed a petition to modify custody and visitation. On December 8, plaintiff¹ filed an application for relief from domestic abuse under Iowa Code chapter 236, alleging defendant had telephoned her on July 24, 2006, "screaming and calling me names and threatened me. Then called back later that night at 11:22 p.m. saying there were green people outside." Her petition also alleged incidents from 1999 through 2005 that had been the subject of prior applications.

¹ In the initial petition and temporary order, plaintiff's name is listed as "Emberly Lashley." In the final protective order, it is listed as "Emberly Brake."

The district court issued an ex parte temporary protective order and set the application for hearing. At the hearing, plaintiff testified that defendant called her on the phone “yelling and screaming and threatening” her and calling her names. She further testified that defendant made the call from California and that she was not aware of any attempts by him to be in her presence outside of a courtroom since he moved to Iowa in 2006. Both parties testified about an incident on September 20, 2005, that occurred during a custody hearing in California. Their versions differed as to who assaulted whom.

The district court stated:

I am going to make a finding of domestic abuse and enter the order. But I will tell both of you this is a very, very close call. I believe there are problems on both sides of this case. I believe there are credibility issues on both sides of this case. But in weighing the equities and the evidence, which I’m required to do, I believe that sufficient proof has been introduced for the court to conclude that there has indeed been an assault.

The court then recited requirements of assault from Iowa Code chapter 708 before continuing:

There has, indeed, from the testimony of both witnesses, been physical contact between these two people, and I don’t want it to happen again. And I think they need to stay apart; and they will, at least for a year pursuant to this order.

After reciting the provisions of the order, the court inquired of the parties if they understood. After both responded “yes,” the following dialogue took place between the court and the plaintiff:

Q. And you understand you can’t contact Mr. Charran or be in his presence or have any communications with him whatsoever except through your attorneys or in a courtroom? A. Yes. However, if he were to violate that restraining order and I were to file for a contempt—and I’m going to have to refile for a contempt of

this order so he can be served for violations he's already violated—I have no address to serve him anything

Q. Ma'am, I would urge you to go forward, hoping he will abide by this order, and put the prior things behind you. A. I'm not going to keep allowing him to abuse me and not do anything about it. He's going to be served, and it's going to be heard. And if they don't want to convict him after it's been heard, when he has been served, they can do that.

Q. Okay. That's fine. You have a legal right to do that. But, as I said before off the record, you sometimes are your own worst enemy. Maybe you should consider that.

When counsel for defendant asked the court, "What is the date of the finding of when this assault took place, for the purposes of the hearing?" the court responded:

I will tell you that it is not—I believe that the circumstances totaled together result in my making this finding. I think the telephone call, coupled with the actions of the court hearing in California, which very honestly greatly disturb me. These two things together make me believe that this order should be entered. And that's why I entered it.

II. Scope and Standards of Review

Appellant contends we should review the district court's ruling de novo. See *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). Because the record suggests the district court tried this case as a law action and ruled on objections as they were made, we will review this matter for correction of errors at law. See *Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997). The district court's findings of fact in a law action 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. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996).

III. Discussion

Iowa Code section 236.3 provides for the district court to issue a protective order “based upon a finding of domestic abuse assault.” Section 236.2(2) defines “domestic abuse” as “committing an assault as defined in Iowa Code section 708.1” under certain domestic circumstances.² Section 708.1 defines assault as doing any of the following without justification:

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.

Defendant first contends substantial evidence does not support a finding of domestic abuse assault as set forth in the Iowa Code. The district court’s ruling provides no guidance as to when, where, and how an assault occurred, nor has the district court identified a perpetrator. We have examined the record and are unable to find substantial evidence of an assault by the defendant to support the district court’s finding and subsequent issuance of a protective order. We therefore reverse the decision of the district court and vacate the protective order.

Even though we do not find substantial evidence supports the district court’s determination there had been an assault, we agree with the court’s sentiment the parties “need to stay apart.” We recognize the need for continued

² The parties fall under 236.2(2)(b) (divorced spouses not living together) and (c) (parents of the same minor child).

interaction because of the provisions for visitation between defendant and the parties' child. We encourage the parties to restrict their personal contact to that which may be required during the exercise of visitation and to limit any other contact to indirect contact, such as through legal counsel.

REVERSED.