

IN THE COURT OF APPEALS OF IOWA

No. 8-539 / 08-0006

Filed July 30, 2008

AMBER ABBENHAUS,
Plaintiff-Appellant,

vs.

LUCAS FLANNAGAN,
Defendant-Appellee.

Appeal from the Iowa District Court for Clay County, Nancy L. Whittenburg, Judge.

Plaintiff appeals the dismissal of her pro se petition for relief from domestic abuse. **REVERSED AND REMANDED.**

Jennifer Cerutti, Sioux City, and Michelle Mackel-Wiederanders of Iowa Legal Aid, Des Moines, for appellant.

Lucas Flannagan, Emmetsburg, pro se.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

EISENHAUER, J.

On December 11, 2007, Amber Abbenhaus filed a pro se petition for relief from domestic abuse naming Lucas Flannegan as the defendant. Amber and Lucas are the parents of a son born in 2006. Amber's petition stated: "Defendant has threatened me and I fear for my physical safety." Amber added an explanation Lucas had threatened her with suffocation. On the same date, the district court *sua sponte* dismissed the petition without hearing and ruled by checking boxes on a form order: (1) There is insufficient evidence of an assault; and (2) The lapse of time between the alleged threat of assault and the present time indicate no present danger of domestic abuse.

Amber appeals arguing her petition met Iowa's notice pleading requirements and the court's summary dismissal violates Iowa's mandatory hearing requirement. Our review is for errors at law. Iowa R. App. P. 6.4.

We agree Amber's pro se petition was sufficient under Iowa's notice pleading requirements. "Under notice pleading, nearly every case will survive a motion to dismiss." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004). Amber, as a pro se party, "is entitled to a liberal construction" of her pleadings. *Munz v. State*, 382 N.W.2d 693, 697 (Iowa Ct. App. 1985).

Further, Amber's right to a hearing is established in Iowa Code section 236.4(1) (2007), which provides: "a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence." The legislature's use of the word "shall" imposes a duty and is mandatory when addressed to public officials. See Iowa Code § 4.1(30)(a); *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000). Only in very limited

situations can a court properly dismiss a domestic abuse petition without holding a hearing. See *D.M.H. v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998) (holding chapter 236 does not create a right of action for children who witness domestic abuse); *Livingood v. Negrete*, 547 N.W.2d 196, 197 (Iowa 1996) (holding “the Domestic Abuse Act was not intended to apply to prison cellmates”). Amber’s petition was improperly dismissed without the court holding the mandatory hearing required by Iowa Code section 236.4(1).

REVERSED AND REMANDED.