

IN THE COURT OF APPEALS OF IOWA

No. 9-1022 / 09-1035
Filed December 30, 2009

CHRISTEN NOLTE,
Plaintiff-Appellee,

vs.

AARON WEILAND,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Kristen Hibbs,
Judge.

Defendant appeals from the district court's entry of a final domestic abuse
protective order. **AFFIRMED.**

Aaron Weiland, Iowa City, appellant pro se.

Derek E. Johnson of Iowa Legal Aid, Iowa City, for appellee.

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

SACKETT, C.J.

The district court issued a temporary protective order on May 11, 2009, and following a continuance requested by the defendant, the matter came on for hearing on June 3, 2009. The plaintiff was represented by counsel and the defendant proceeded pro se. The district court issued a final protective order on June 8, 2009. The defendant now appeals asking that the protective order be vacated and a new hearing be granted because he was not informed of his right to counsel. We affirm.

The defendant contends the court was required to inform him of his right to counsel under Iowa Code section 236.4(5) (2009),¹ and pursuant to his constitutional right to due process. Civil domestic abuse cases are heard in equity and therefore warrant our de novo review. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). We also review the record de novo when a party raises issues concerning fundamental constitutional rights. *Id.*

¹ Iowa Code section 236.4 provides,
Hearings-temporary orders

1. Not less than five and not more than fifteen days after commencing a proceeding and upon notice to the other party, a hearing shall be held at which the plaintiff must prove the allegation of domestic abuse by a preponderance of the evidence.
2. The court may enter any temporary order it deems necessary to protect the plaintiff from domestic abuse prior to the hearing, upon good cause shown in an ex parte proceeding. Present danger of domestic abuse to the plaintiff constitutes good cause for purposes of this subsection.
3. If a hearing is continued, the court may make or extend any temporary order under subsection 2 that it deems necessary.
4. Upon application of a party, the court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers.
5. The court shall advise the defendant of a right to be represented by counsel of the defendant's choosing and to have a continuance to secure counsel.
6. Hearings shall be recorded.

On our review, we find the statute was not violated nor was the defendant's right to due process infringed. The record shows the court advised the defendant of the hearing and his right to counsel through the temporary protective order. Paragraph eight of the temporary protective order listed the original hearing date and explains, "[e]ach party has the right to be represented by an attorney at this hearing." The form states the county sheriff shall serve the defendant a copy of the temporary order, and the defendant does not claim he failed to receive this notice. The defendant requested a different hearing date, which was granted, and he appeared and defended himself against the allegation of domestic abuse. Due process requires reasonable attempts to notify the defendant of the hearing, and a reasonable opportunity to defend the action. *Bartsch v. Bartsch*, 636 N.W.2d 3, 9 (Iowa 2001); *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). These due process requirements were met. We affirm the entry of the final protective order. Costs of the appeal are charged to the defendant.

AFFIRMED.