

IN THE COURT OF APPEALS OF IOWA

No. 9-942 / 09-0704
Filed December 17, 2009

CHRISTINE A. KADURA,
Plaintiff-Appellant,

vs.

BASSAM M. KADURA,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Thomas L. Koehler,
Judge.

Christine Kadura appeals the district court's orders dismissing her petition for relief from domestic abuse and granting Bassam Kadura's cross-petition for relief from domestic abuse. **AFFIRMED IN PART AND REVERSED IN PART.**

Melody J. Butz of Butz Law Offices, PC, Cedar Rapids, for appellant.

Anne K. Wilson of Allen, Vernon & Hoskins, P.L.C., Marion, for appellee.

Considered by Vogel, P.J., and Doyle and Mansfield, JJ.

MANSFIELD, J.

Christine (Chris) Kadura appeals the district court's order denying her petition for relief from domestic abuse and granting the petition filed by her husband, Bassam (Sam) Kadura. On our de novo review, we find that both petitions should have been denied. Accordingly, we affirm in part and reverse in part.

The parties married in 1984 and have two children, a boy aged seventeen and a girl aged thirteen. This case stems from certain events of March 21, 2009. The entire family was at home. Chris revealed that she was seeing another man. Sam asked her to stay, but Chris packed a bag and insisted on leaving. Sam pursued her into the garage, still trying to get Chris to talk it over. Chris started to call the police on her cell phone. Meanwhile, Sam tried to get Chris to give him the phone saying, "We need to talk to this over." The son and daughter both witnessed these events unfolding. At some point the son intervened. He put his hand on Sam and said, "It's time to let her go." When the police arrived, they also advised Sam to let Chris leave, and eventually she did.

Both parties subsequently filed petitions in district court, each alleging that the other had committed domestic abuse in violation of Iowa Code chapter 236 (2009). The petitions were consolidated for hearing. Chris was represented, and Sam was not. The district court conducted most of the questioning.

At the hearing, Chris testified that when everyone was in the garage on March 21, Sam "picked me up about three feet off the ground and threw me down to the cement." Sam denied this charge in his testimony. Most

significantly, their seventeen-year-old son also took the stand and denied this incident had occurred.¹ He testified that Chris was never restrained at any point.

Chris also testified about an alleged incident four days later on March 25, 2009. She explained that she had returned to the house to retrieve some possessions. Sam was not there at the time. Chris used a rock to break a small window and get into the house, because Sam had changed the locks. After retrieving her items, and while later driving away, Chris claims she encountered Sam's vehicle heading in the opposite direction, and that Sam went into her lane and "tried to hit me head-on." According to Chris, their daughter was in Sam's vehicle at the time. Chris said she had to go onto the curb to avoid a collision. Chris testified that Sam turned around his vehicle and followed her to a parking lot, but left when Chris called the police. According to Chris, Sam later called Chris and said, "I just want to talk to you." Chris said she told Sam, "okay, come here and talk to me," but he never showed up.

Chris was asked by the court whether she had committed physical abuse against Sam. She testified that she had never hit him, and "[t]he worst thing I've ever done to him was push him" around the year 2000. Sam's testimony did not mention any physical abuse by Chris of him.

At the conclusion of the hearing, the district court dismissed Chris's petition, finding that she had failed to prove domestic abuse by a preponderance of the evidence. The district court stated that on the record that it found the son's testimony credible. The district court then granted Sam's petition and placed the

¹ The son and the daughter both came to the hearing and were sequestered during the testimony of Chris and Sam. After the son testified, Chris was given the opportunity to call the daughter as a witness. She declined to do so.

children in Sam's temporary custody based on its finding that Chris had committed domestic abuse. Chris appeals.

Because this civil domestic abuse case was heard in equity, our review is de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). We give respectful consideration to the trial court's factual findings and credibility determinations, but those holdings are not binding on appeal. *Id.*

"Domestic abuse" occurs when a person commits an assault as defined in Iowa Code section 708.1 under certain circumstances, such as assault between family or household members who reside together at the time of the assault. Iowa Code § 236.2(2)(a). Allegations of domestic abuse must be established by a preponderance of the evidence. *Id.* § 236.4(1). "A preponderance of the evidence is the evidence that is more convincing than opposing evidence or more likely true than not true. It is evidence superior in weight, influence, or force." *Martinek v. Belmond-Klemme Cmty. Sch. Dist.*, 772 N.W.2d 758, 761 (Iowa 2009) (internal quotations and citations omitted).

Giving deference to the trial court's credibility findings, we agree that Chris failed to establish that Sam committed domestic abuse. The son testified that Sam never grabbed or physically restrained Chris, that Chris fell down on her own, and that everyone in the family was trying to convince her to stay. Our vantage point is not as good as the district court's was. Even so, from our review of the transcript, the son comes across as a more credible witness than Chris. The district court was also entitled to disbelieve Chris's testimony that Sam had tried to run his vehicle into hers four days later. We share the district court's

conclusion that Chris failed to establish this incident actually occurred.² Thus, we agree that Chris failed to prove by a preponderance of the evidence that Sam committed an act of assault against her.³ Accordingly, we affirm the district court's dismissal of Chris's petition.

However, we are unable to sustain the district court's finding that Chris committed domestic abuse against Sam. Sam did not testify to any such abuse. His petition alleged vaguely, "My wife has a history of physical abuse toward me. She has been seeing a psychiatrist for quite some time." The only testimony that even bore upon this subject came from Chris. She denied ever hitting Sam. However, she conceded she had pushed him, although she was discussing things she had done nine years ago, at which time she was under the care of a psychiatrist. She denied having been to a psychiatrist since 2000.

We believe the evidence does not support a finding that Chris committed domestic abuse against Sam. Anything that happened in 2000 would have been well outside the statute of limitations. Iowa Code § 614.1(2) (two-year statute of limitations for personal injury claim "for a statute penalty"); *Borchard v. Anderson*,

² Notably, Chris elected not to call her daughter, who according to her had witnessed this incident. Also, we find Chris's description of this incident as a whole somewhat implausible: Even if Sam was upset with Chris, it would take a certain kind of individual to try to run his vehicle head-on into his spouse's large vehicle (Chris drove a Jeep), with the couple's daughter sitting with him. We recognize the dark side of domestic abuse, but our duty, like the district court's, is to be a disinterested factfinder, and based on the record as a whole, we agree with the district court's determination.

³ An assault in this case would have required an 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," or an 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." Iowa Code § 708.1(1), (2).

542 N.W.2d 247, 249 (Iowa 1996) (two-year statute of limitations for intentional tort claim arising out of domestic abuse). Sam argues that

during her testimony, Christine admitted that she had shoved Sam in the past Because Christine did the act of shoving Sam, she had the apparent present ability to do so [G]iven Christine's admission that she had assaulted Sam, her mental health history, and the volatile circumstances of their confrontation, and her action of breaking into the home, Sam was certainly justified in his fear that Christine will cause him harm in the future.

But domestic abuse, as defined by the legislature, requires more than a generalized fear that the defendant will commit an act of physical abuse. Rather, there must be an act "intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive." Iowa Code § 708.1(2). Sam failed to prove this.

For the foregoing reasons, we affirm the dismissal of Chris's petition for relief from domestic abuse. We vacate and reverse the final domestic abuse order entered by the district court on Sam's petition for relief. Costs are to be divided evenly between the parties.

AFFIRMED IN PART AND REVERSED IN PART.