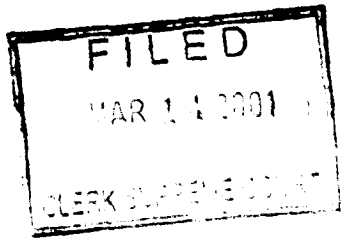
IN THE COURT OF APPEALS OF IOWA

No. 1-128 / 00-973
Filed March 14, 2001

SANDRA D. WORTHY,
Plaintiff-Appellee,

vs.

DAVID H. WORTHY,
Defendant-Appellant.



Appeal from the Iowa District Court for Mitchell County, John S. Mackey, Judge.

David Worthy appeals from the issuance of a permanent protective order.

AFFIRMED.

Russell Schroeder, Jr. and DeDra Schroder of Schroeder Law Office, Charles City, for appellant.

Sandra D. Worthy, Osage, pro se.

Considered by Habhab, Honsell, and C. Peterson, Senior Judges.*

*Senior Judges assigned by order pursuant to Iowa Code section 602.9206 (2001).

C. PETERSON, S.J.

This is an appeal from a protective order issued by the court after hearing on a petition for relief from domestic abuse. The court determined David Worthy committed a domestic abuse assault on Sandra Worthy and entered a permanent protective order enjoining contact by David with Sandra, except for visitation with the minor children by David as scheduled in the decree of dissolution. David contends in this appeal that there is insufficient evidence to support the determination that he committed a domestic abuse.

On April 22, 1999, David returned the children to Sandra's home after a scheduled visitation. On that occasion Sandra testified that David jumped out of the van, and "he started swearing at me, spitting in my face, how dare you talk to my wife like that and then he came after me, reached for my throat, grabbed me, started to shake me and I threw coffee up in his face." David denies any physical assault on his part, but affirms that Sandra threw hot coffee in his face requiring medical attention. He acknowledged that the conversation had reached a fever pitch before the coffee was thrown in his face, and testified that he "snapped her off" when Sandra approached the car and "started jumping down his throat."

Sandra withdrew from the confrontation and immediately called 911. She told the officer she was in grave danger and that David had threatened her. She did not mention any physical assault in that conversation with the sheriff. Sandra visited the sheriff's office later in the day to make a report of the incident that included a description of a physical assault. The sheriff could observe no physical evidence that Sandra had been touched or choked.

The provisions of Iowa Code section 236.4 require that the allegations of domestic abuse must be established by a preponderance of the evidence. When it is said that the burden rests upon either party to establish any particular fact or proposition by a preponderance or greater weight of evidence, it is meant that the evidence offered and introduced in support thereof to entitle said party to a verdict, should when fully and fairly considered produce the stronger impression upon the mind and be more convincing when weighed against the evidence introduced in opposition thereto. *Mabrier v. A.M. Servicing Corp. of Raytown,* 161 N.W.2d 180, 184 (Iowa 1968). This case was tried as an equity case, and therefore our review is de novo. *Knight v. Knight,* 525 N.W.2d 841, 843 (Iowa 1994). We review both the facts and the law and determine, based on the credible evidence, rights anew on those propositions properly presented. *See Sunset Mobile Home Park v. Parsons,* 324 N.W.2d 452, 454 (Iowa 1982).

Domestic assaults are not generally committed in the presence of persons other than the participants and therefore not easy to establish, but that does not reduce the quantum of proof necessary. A domestic assault is a serious matter. Chapter 236 of the Code of Iowa was designed to provide an adequate remedy against an abusing party that would be prompt and effective. A determination of domestic assault also has serious implications. In addition to the direct penalties involved it can, among other factors, affect the right to custody of children and the right to possession of firearms. *See* 18 U.S.C. § 922(d)(8) and (g)(8); Iowa Code § 598.41.

In this type of case trial courts are often placed in a very difficult role. The parties are generally very emotional about the circumstances, and commonly one or both of the parties are without counsel. Often the only direct evidence, as in this case, is the testimony of the parties, and it is generally very conflicting. The credibility of the witnesses can be the deciding factor. The trial court had the opportunity to observe the demeanor of the witnesses and the manner of their testimony. While we are not bound by the findings of the trial court, it is a factor to be considered and weighed. Iowa R. App. P. 14(f)(7). David does deny any assault, but does acknowledge a highly charged scene. The lack of evidence of a physical assault upon Sharon does not preclude that an assault occurred as defined in Iowa Code section 708.1(2). An assault under either section 708.1(1) or section 708.1(2) can give rise to a domestic assault. Giving weight to the trial court's findings and examining the record from these proceedings, we conclude the judgment of the trial court should be affirmed. Costs of appeal are assessed to the appellant.

AFFIRMED.