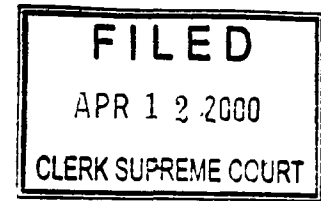


IN THE COURT OF APPEALS OF IOWA

No. 1999-367 (9-620) / 98-1932
Filed April 12, 2000



JODIE L. HAWLEY,
Plaintiff-Appellee,

vs.

ROGER S. LYONS,
Defendant-Appellant.

Appeal from the Iowa District Court for Jefferson County, James P. Rielly,
Judge.

Defendant appeals the district court order prohibiting him from contacting
plaintiff for one year pursuant to Iowa Code chapter 236 (1997). **AFFIRMED.**

J.W. McGrath of McGrath & McGrath, P.C., Keosauqua, for appellant.

James B. Clements, Davenport, for appellee.

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

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MAHAN, J.

The defendant-appellant, Roger Lyons, appeals the district court's no-contact order issued under Iowa Code chapter 236 (1997). He claims the court's finding he committed domestic abuse on the plaintiff-appellee, Jodie Hawley, is not supported by sufficient evidence. We affirm.

Background. Roger Lyons and Jodie Hawley were never married, but have a daughter, Crystal, born in June 1989. Roger has primary physical care and custody of Crystal. A case is pending involving Crystal's custody and visitation. Crystal lives with Roger and his wife, Deana, in Fairfield. Jodie lives in Davenport.

In August 1998, Crystal and Jodie were at Crystal's baseball team's swimming party at a motel in Fairfield. It was not Jodie's normal visitation weekend. Crystal called home, asking to stay an extra hour. Deana told her she'd have to talk to Roger. Crystal called Roger at his brother's home and he gave her permission to stay an extra hour at the party. Roger arrived to pick Crystal up shortly before the extra hour was over. Crystal asked to stay overnight with Jodie at the motel where the party was, saying Jodie had said she could. Roger refused. Jodie and Roger argued about whether or not Crystal would stay overnight at the motel. As Roger attempted to leave with Crystal, he and Jodie had a brief altercation. After he and Crystal had gone, Jodie called the local police, but they were unable to respond because of a serious vehicle accident. Jodie returned home the next day without further contact with the

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police. About a week later she filed for relief from domestic abuse under Iowa Code chapter 236.

District Court Proceeding. At the hearing, Roger testified he opened a door, and Jodie put her foot in front of it. The door went over Jodie's foot. Roger and Crystal said he let go of the door when Jodie told him it was over her foot. Crystal said Jodie slammed the door on Roger's knee. Roger and Crystal testified Jodie initiated physical contact by grabbing them as Roger attempted to leave with Crystal. He claimed injuries to his arm and knee. Crystal testified Roger pushed Jodie away. Jodie testified she was hugging Crystal when Roger initiated physical contact by grabbing her arm and throwing her against a wall. Jodie claimed injuries from hitting the wall. Jodie's fiancé testified she has pushed and shoved him. After the hearing tried at law, the court found Roger committed domestic abuse by grabbing Jodie and shoving her against a wall. The court entered a no-contact order between Roger and Jodie for one year, except for matters involving visitation, court-ordered counseling, and the pending custody litigation. The court did not grant Jodie temporary custody of Crystal, as Jodie had requested in her petition. The district court did not make any specific findings concerning credibility of witnesses.

Appellate Claims. On appeal, Roger claims there was insufficient evidence supporting the court's finding he committed domestic abuse. Roger argues he and Crystal provided consistent testimony Jodie initiated the contact. He asserts Crystal's testimony was the most credible, yet it directly contradicted

Jodie's testimony. He notes this order casts him in an adverse light in the pending custody and visitation proceedings.

Analysis. We review an action under Iowa Code chapter 236 according to how it was tried in district court. *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). The district court ruled on objections, treating this as a law action. Accordingly, our review is for errors of law. *Id.*; Iowa R. App. P. 4. The district court's findings are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings. *Bacon ex rel. Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997).

Roger's and Crystal's testimony agreed Jodie started the altercation by grabbing Roger. Another girl at the party testified at the hearing. Her testimony did not address who started the incident, but it supported a portion of Jodie's testimony. Roger's main argument is this court should view both his testimony and Jodie's as biased, but should treat Crystal's as unbiased and credible. Since her testimony supports his version of the incident, he argues the court's findings are not supported by substantial evidence. Evidence is not insubstantial simply because it could support a contrary finding. *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995).

This is a close case. The testimony of the witnesses is conflicting. The credibility determinations of the district court are implicit in its findings. There is substantial evidence in the record to support the district court's finding Roger committed domestic abuse. Substantial evidence in the record could support a

We find the trial court's interpretation of its own decree to be eminently reasonable and correct. Based on the evidence presented at the 1989 trial, the trial court understood John could not expect to accrue further benefits unless he changed employment, and it was the court's understanding in 1989 John would receive a maximum pension of nine hundred dollars per month. Therefore, the trial court could only have meant in the 1989 decree to award Jean twenty-five percent of the nine hundred dollar pension benefit, or \$225 per month.

Pension benefits are personal property subject to equitable distribution in a dissolution of marriage. *In re Marriage of Ruter*, 564 N.W.2d 849, 851 (Iowa App. 1997). *In re Marriage of Kurtt*, 561 N.W.2d 385, 388 (Iowa App. 1997). However, it is the net worth of the parties at the time of trial which is relevant in adjusting their property rights. *In re Marriage of Muelhaupt*, 439 N.W.2d 656, 661 (Iowa 1989); *In re Marriage of Moffatt*, 279 N.W.2d 15, 20 (Iowa 1979). The trial court was reasonable in assuming it attempted to follow these principles of law when fashioning the 1989 dissolution decree, and in the order now appealed noted it would not have intended to divide pension benefits not yet earned. After the original decree was entered in this case, our supreme court has noted with favor a case interpreting these principles to mean "any increase in the pension benefits accrued after a dissolution decree cannot be considered marital property." *In re Marriage of Benson*, 545 N.W.2d 252, 255 (Iowa 1996) (citing *In re Marriage of Klein*, 522 N.W.2d 625, 628 (Iowa App. 1994)). We find no error in the trial court's construction of the dissolution decree in this case.

AFFIRMED.

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