

IN THE COURT OF APPEALS OF IOWA

No. 1-602 / 11-0055
Filed October 5, 2011

ZACHARY ANTHONY ALAN CROUCH,
Plaintiff-Appellee,

vs.

K.K.,
Defendant-Appellant.

Appeal from the Iowa District Court for Cherokee County, Patrick M. Carr (motion to dismiss), Judge, and Mary L. Timko (protective order), Associate Juvenile Judge.

K.K. appeals from the juvenile court's issuance of a final domestic abuse protective order. **AFFIRMED.**

A. Eric Neu of Neu, Minnich, Comito & Neu, P.C., Carroll, for appellant.

John P. Loughlin of Loughlin Law Firm, Cherokee, for appellee.

Heard by Vogel, P.J., and Potterfield and Danilson, JJ.

POTTERFIELD, J.

K.K. appeals from the juvenile court's issuance of a final domestic abuse protective order. She contends the district court erred in not dismissing the action, and the juvenile court incorrectly found she had committed a domestic abuse assault against Crouch. The district court was required to "waive its jurisdiction over the action to the juvenile court" pursuant to Iowa Code section 236.3 (Supp. 2009) and had authority to continue the hearing, which was scheduled and commenced within the statutory deadline. Because Crouch proved by a preponderance of the evidence that K.K. committed a domestic abuse assault, we affirm the issuance of the protective order.

I. Background Facts and Proceedings.

On November 1, 2010, Zachary Crouch filed a petition for relief from domestic abuse against K.K. alleging that on October 31,

I was attack [sic] from behind when taking family picture by [K.K.] when I was knock down to the ground with [B.C.] in my arms, Tanya Webb then took [B.C.] and gave him to [K.K.] and then ran back to the truck and left, she assaulted my sister Ashley Crouch scratch [sic] her arm up and she was hit in the stomach, she is 4 months pregnant. We took pictures of the marks she left the police where [sic] called to the house and took pictures of the marks that were left on [Crouch] and Ashley Crouch.

In the petition, Crouch indicated that K.K. was "17 years or younger" and that the plaintiff and defendant were the parents of the same minor.

A temporary protective order was entered by Judge David Lester in which he granted temporary custody of B.C. to Crouch. A hearing on Crouch's petition was scheduled in the district court on November 15, 2010, before the statutory deadline.

K.K. served a motion to dismiss on November 9, 2010, noting she was a seventeen-year-old minor and,

[p]ursuant to Iowa Code section 236.3 (final paragraph), “[i]f the person against whom relief from domestic abuse is sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.”

At the November 15, 2010 hearing, K.K.’s attorney argued there was a statutory time frame in which such hearings must be held; it was “now too late” to have the hearing within the statutory time frame; and “I filed a motion to dismiss because I didn’t see how jurisdictionally it was going to be able to be transferred to the juvenile court.”

The district court stated it would “do what the statute says” and “waive our jurisdiction and to bring this promptly to the attention of the juvenile court.” The district court found the cited terms of section 236.3 were mandatory. It continued the hearing to comply with the requirement that the case be heard in juvenile court.

Upon receipt of the district court’s order, the juvenile court scheduled the continued hearing for November 30, 2010.

At the November 30 hearing before the juvenile court, Crouch testified that he and Tanya Webb, the mother of another one of his children, met to have pictures taken of the children in Halloween costumes. Crouch stated he was holding B.C. when K.K. tackled him from behind. He said he fell forward and had to brace himself so as not to fall on top of B.C. Crouch stated that Crouch’s sister, Ashley Crouch, grabbed for B.C. while K.K. “came up over my back and clawed Ashley’s arm, which is when Tanya got ahold of [B.C.] and gave him” to

K.K. He submitted photographs showing a large red mark on his back and a scratch on Ashley's arm he asserted were from K.K.'s assault. Ashley Crouch and Corey Moritz both testified K.K. tackled Crouch to the ground, grabbed B.C., and fled the area.

K.K. admitted that she took B.C., but insisted Tanya Webb was holding B.C. at the time; she testified it was Crouch who tackled K.K. She stated she and Webb agreed beforehand that K.K. would wait in hiding while photographs were being taken and when Webb had B.C. in her care, K.K. would come out of hiding and take him. Webb testified that she, Crouch, and the two children were being photographed when Crouch handed her B.C. At that point, Webb stated she texted K.K. that she "had" B.C. and then

[K.K.] came out from behind and took [B.C.] from my arms, and that's when Zach pushed me over onto my back and knocked [K.K.] onto her back. And then [K.K.] had her arms wrapped around [B.C.], and Zach jumped, was still on top of her and punching her on her back and her side, and Ashley had stepped in to grab [B.C.'s] leg. And at that time Justin [Coon] my boyfriend, stepped forward, and Zach got off [K.K.] and ran into the house.

Justin Coon testified he was taking photographs when K.K. came out from behind the house,

Then Tanya handed [B.C.] to [K.K.] Zach jumped onto Tanya, grabbed onto [B.C.] [K.K.] had both her hands around [B.C.] to a [sic] protect him so he don't get hurt and to make sure that nothing happens to him. . . . And then what happened after that was Ashley came in, took both her hands, grabbed [B.C.'s] feet, and started pulling on [B.C.]

Following the hearing on November 30, 2010, the juvenile court entered a final domestic abuse protective order¹ on the prescribed form, which contains the pre-printed findings that K.K. was (1) “personally served with the copy of the petition and temporary protective order containing notice of this hearing”; (2) “committed a domestic abuse assault against the protected party named above”; (3) “represents a credible threat to the physical safety of the protected party”; and (4) the parties “meet the definition of intimate partners.” Crouch was granted temporary custody of B.C. and K.K. was granted visitation.

K.K. now appeals, contending the district court erred in not dismissing the action and the juvenile court incorrectly found she had committed a domestic abuse assault against Crouch.

II. Scope of Review.

We review civil domestic abuse cases *de novo*. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(g).

III. Merits.

A. Relevant legal principles. The domestic abuse chapter, chapter 236 of the Iowa Code, is meant to be protective rather than punitive in nature; it is to be given a reasonable or liberal construction, which would best effect its purpose. See *Wilker*, 630 N.W.2d at 596.

¹ Form 4.2: Protective Order Following Adjudication of Domestic Abuse (Section 236.3 Petition)—Final Domestic Abuse Protection Order.

Iowa Code section 236.3 sets forth the procedure for initiating an action for a domestic abuse protection order. The statute lists the identifying information to be contained in the petition and provides further:

1. A person . . . may seek relief from domestic abuse by filing a verified petition in the district court. Venue shall lie where either party resides. . . .

2. A temporary or emergency order shall be based on a showing of a prima facie case of domestic abuse. If the factual basis for the alleged domestic abuse is contested, the court shall issue a protective order based upon a finding of domestic abuse by a preponderance of the evidence.

3. The filing fee and court costs for an order for protection and in a contempt action under this chapter shall be waived for the plaintiff. . . .

4. If the person against whom relief from domestic abuse is being sought is seventeen years of age or younger, the district court shall waive its jurisdiction over the action to the juvenile court.

If jurisdiction is waived to juvenile court under section 236.3(4), section 232.8(1)(d) provides the “juvenile court shall have jurisdiction in proceedings commenced against a child pursuant to section 236.3.” The juvenile court hears the action “in the manner of an adjudicatory hearing” and “shall abide by the provisions of section 236.4 and 236.3B.” Iowa Code § 232.8(1)(d).

B. The district court did not err in refusing to dismiss. Iowa Code section 236.4(1) provides: “*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.*” (Emphasis added.) K.K. argues that because the evidentiary hearing on the merits was not held within the statutory time frame of Iowa Code section 236.4(1), the district court erred in not dismissing the action at the hearing—which commenced within the statutory time frame.

We disagree. The petition was filed on November 1 and a hearing was set for November 15, which was within the statutory time frame of fifteen days.² However, although the parties were ready to proceed to a hearing on the merits, K.K. had filed a motion to dismiss, which the court was required to and did consider. K.K. filed her motion November 9th, which did not afford Crouch the opportunity to resist before the November 15th hearing, and did not afford the district court an opportunity to consider the motion and any response before the November 15th hearing. K.K.'s counsel offered to proceed with the district court sitting as a juvenile court:

Given that she's a minor, it seems that the principal protection is just to keep this thing confidential. I personally have no problem with this Court hearing this today, and I think the district court could assume the juvenile court's jurisdiction today. Our concern really relates more to the confidential nature. So, if the Court wished to convert it to juvenile and go ahead and hear it today, that we don't have a problem with.

² K.K. relies upon an unpublished opinion of this court in which we found dismissal of a forcible entry and detainer action was required because the initial hearing was set outside the statutory time frame. Similarly this is not a situation like that recently considered by the supreme court in *In re Det. of Johnson*, ___ N.W.2d ___, ___ (Iowa 2011), where the court met with the parties of a sexually violent predator civil commitment trial within the statutory time frame for the purpose of scheduling the hearing, but the scheduled date was outside of the deadline. This is not such a case because the hearing was initially scheduled to begin, and did begin, within the fifteen-day time limit.

We also note that in *Johnson*, in concluding dismissal was not required even though the hearing was held outside the statutory deadline, the supreme court noted that a "post-civil commitment readjudication does not create the same threat to liberty deprivation as an initial civil commitment prosecution" and thus "there is less reason to believe the legislature intended section 229A.8(5)(e) to provide prophylactic due process protection through discharge or dismissal." *Johnson*, ___ N.W.2d at ___. Cf. *In re Det. of Fowler*, 784 N.W.2d 184, 190–91 (Iowa 2010) (holding a violation of section 229A.7(3) entitled Fowler to dismissal of his civil commitment action). Here, a civil protection order does not result in detention or commitment and therefore does not raise the same concerns with respect to an accused's liberty interest as either a civil commitment order or post-civil commitment readjudication.

The district court was not required to exercise juvenile court jurisdiction and declined K.K.'s offer:

I probably have authority to exercise juvenile court jurisdiction.^[3] . . . I don't because they know things I don't and they have resources that I'm not used to wielding. And so there's an expertise issue there as well. I believe I agree with you that I should transfer this, though, to the juvenile docket and direct that it be made confidential going forward.

The district court then continued the hearing, which is allowed by statute. See Iowa Code § 236.4(4) ("If a hearing is continued, the court may make or extend any temporary order under subsection 2 or 3 that it deems necessary."). The juvenile court thereafter set a time for the evidentiary hearing on the merits.

Dismissal was not required on November 15, 2010, as the hearing on that date was not beyond the statutory bar. The district court had authority to continue the matter. The juvenile court promptly set the matter for hearing. Under these circumstances, we find no error in the district court granting K.K.'s request to waive jurisdiction to the juvenile court as dismissal was not required.

Moreover, at the hearing in juvenile court, K.K. did not renew her motion to dismiss nor did she object to the hearing as scheduled.

C. Crouch proved by a preponderance of the evidence that K.K. engaged in domestic abuse. The person seeking a protective order must prove the occurrence of domestic abuse by the preponderance of the evidence. *Wilker*, 630 N.W.2d at 596; see also Iowa Code § 236.3(2) ("If the factual basis for the

³ See Iowa Code § 602.7101(2) ("The jurisdiction of the juvenile court may be exercised by any district judge, and by any district associate judge who is designated by the chief judge as a judge of the juvenile court.").

alleged domestic abuse is contested, the court shall issue a protective order based upon a finding of domestic abuse by a preponderance of the evidence.”).

“Domestic abuse” is defined in Iowa Code section 236.2(2). That definition includes “committing assault as defined in section 708.1” when the assault is between “persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.” Iowa Code § 236.2(2)(c).

Section 708.1 in turn provides in relevant part:

A person commits an assault when, without justification, the person does any of the following:

1. Any 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.
2. Any 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.

“Upon a finding that the defendant has engaged in domestic abuse . . . [t]he court may grant a protective order” ordering that “the defendant stay away from the plaintiff’s residence, school, or place of employment”; and “awarding . . . temporary custody of or establishing temporary visitation rights with regard to children under eighteen.” Iowa Code § 236.5(1)(b); *see generally Bartsch v. Bartsch*, 636 N.W.2d 3, 10 (Iowa 2001) (noting a protective order “does not attempt to impose a personal judgment against the defendant”; but “merely order[s] the defendant to ‘stay away from the protected party’ and not assault or communicate”).

The juvenile court issued a form protective order, underlining the pre-printed phrase “by a preponderance of the evidence” followed by the preprinted

findings that K.K. “committed a domestic abuse assault” against Crouch, and K.K. “represents a credible threat to the physical safety of [Crouch].” The form order required to be used after domestic abuse hearings supplies only these bare minimum findings of facts (“Respondent committed a domestic abuse assault”) and a quasi-determination of credibility (“Respondent represents a credible threat”), leaving this court with very little to which we can defer. The form does not allow space for meaningful findings regarding which of the disputed facts were persuasive or which of the witnesses were credible.

The juvenile court granted the protective order and so, by broad implication, found Crouch’s version of events was more credible than K.K.’s. The photograph of Crouch’s back following the incident, which shows a large red mark across his left shoulder, lends support for Crouch’s version of the events. Thus, after our de novo review of the record and after giving weight to the trial court’s implicit determination that Crouch’s testimony was more credible, we conclude there is sufficient evidence to establish by a preponderance of the evidence that K.K. committed an assault. Accordingly, we affirm.

AFFIRMED.