

**IN THE COURT OF APPEALS OF IOWA**

No. 3-721 / 12-2196  
Filed October 2, 2013

**IN RE THE MARRIAGE OF RODNEY CONNER  
AND DEBBIE CONNER**

**Upon the Petition of  
RODNEY CONNER,**  
Petitioner-Appellee,

**And Concerning  
DEBBIE CONNER, n/k/a DEBBIE FIFER,**  
Respondent-Appellant.

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Appeal from the Iowa District Court for Scott County, Nancy S. Tabor,  
Judge.

Debbie Conner appeals from the district court's decision granting her ex-husband Rodney Conner and their three children an order of protection and extending a temporary writ of injunction. **AFFIRMED IN PART AND VACATED IN PART.**

Eric D. Puryear and Eric S. Mail of Puryear Law, P.C., Davenport, for appellant.

Jennifer Olsen of Olsen Law Firm, Davenport, for appellee.

Considered by Potterfield, P.J., and Mullins and Bower, JJ. Tabor, J., takes no part.

**POTTERFIELD, P.J.**

Debbie Conner appeals from the district court's decision granting her ex-husband Rodney Shane Conner and their three children an order of protection and extending a temporary writ of injunction and temporary modification of the parties' divorce decree. She argues the format of the proceedings violated her rights to procedural due process of law, the court improperly extended a temporary writ of injunction, and the court improperly granted the order of protection as insufficient evidence supported a finding of domestic violence. We find Debbie's due process argument without merit and affirm the issuance of the temporary writ of injunction; as to the protective order, we find the children are not qualified protected parties and that insufficient evidence supports the order of protection in favor of Shane.

**I. Facts and proceedings.**

On August 11, 2012, police raided the home of Debbie Conner, finding a methamphetamine laboratory in the home. Debbie lived in that home with her husband and Debbie's three children, born during Debbie's previous marriage to Rodney Shane Conner.<sup>1</sup> A decree dissolving Debbie and Shane's marriage was entered in 2007, awarding the parents joint legal custody and joint physical care of the children. Both parties remarried.

After the raid, the department of human services began an investigation into possible abuse or neglect of the children by Debbie. At this time, Shane had the children in his care. Shane filed an application for a temporary writ of

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<sup>1</sup> Rodney is called Shane in the district court orders and we will use that name in our opinion.

injunction to prevent Debbie from removing the children from his care and also filed an application for an emergency temporary modification of the divorce decree requesting physical care of the children.<sup>2</sup> The court granted the temporary injunction and the emergency modification the same day, and placed the children in Shane's physical care. The parties' eldest son struggled with placement with his father. He continued to communicate with his mother, ran away to his mother's house, and texted a threat to Shane and his wife.

On August 31, Shane filed a petition for an order of protection. He alleged Debbie made threats against him in a conversation between Debbie and the children's school principal. He also alleged a threat was made against him by the parties' oldest son. A temporary order of protection named him as the protected party. The court set a hearing date. Later, a modified order issued changing the hearing to a date when the other pending matters were scheduled to be heard, and added the three children as additional protected parties.

The hearing was held September 28, 2012. Both parties agreed to a bifurcated hearing process. The first part of the hearing was devoted to the domestic violence case and Shane's petition for order of protection. The second half of the hearing covered Debbie's motion to dissolve the temporary injunction and Shane's application for temporary modification of physical care. The district court allowed cross-examination of witnesses during the first part of the hearing but disallowed cross-examination during the second half, citing a local rule limiting evidence to testimony of the parties and affidavits. Debbie objected to

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<sup>2</sup> Our supreme court has ruled Debbie cannot challenge on direct appeal the emergency temporary modification.

the lack of cross-examination during the presentation of evidence regarding the physical care and injunction issues. The court overruled her objection, and later denied her motion to reconsider on the same grounds.

The court granted the order of protection, continued the temporary injunction, and placed temporary physical care with Shane. Debbie appeals the district court's decisions regarding the order of protection and temporary injunction.

## **II. Analysis.**

We review this matter tried in equity de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). We also review claims based on constitutional error de novo. *State v. Bentley*, 739 N.W.2d 296, 297 (Iowa 2007).

### *A. Due process.*

Debbie first argues the court's decision to deny cross-examination during the second half of the hearing proceedings denied her procedural due process of law. Because Debbie was allowed to cross-examine witnesses during the first half of the bifurcated proceedings which pertained to the order of protection,<sup>3</sup> we consider this argument only as to the injunction issue.

Unlike permanent injunctions, "temporary injunctions are interlocutory in nature. An appeal of such a decision is therefore interlocutory and for that reason is not allowed as a matter of right." *PIC USA v. N. Carolina Farm P'ship*,

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<sup>3</sup> Though Debbie implies fault with the bifurcated proceedings as a whole and implies some kind of overall constitutional error tainted the first half of the proceedings, the district court was very careful to limit the scope of testimony given during the first part of the proceedings to the petition for protective order, and Debbie was allowed a full and fair opportunity to cross-examine witnesses during that part of the proceedings. She also fails to cite any authority supporting the proposition that the order of protection hearing was deficient. See Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue.").

672 N.W.2d 718, 723 (Iowa 2003). Our supreme court “has traditionally been parsimonious about allowing interlocutory appeals.” *Mason City Prod. Credit Ass’n v. Van Duzer*, 376 N.W.2d 882, 886 (Iowa 1985). However, in response to Shane’s motion to dismiss Debbie’s appeal of the injunction, our supreme court allowed the appeal as a matter of right.<sup>4</sup>

Debbie’s assertion that she must be allowed full opportunity to cross-examine witnesses prior to the issuance of a preliminary injunction is without merit.

A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation. The court may in any case require notice to the party sought to be enjoined and must provide for notice and hearing in those cases identified in Iowa Rule of Civil Procedure 326 [Now Iowa R. Civ. P. 1.1507].

*Kleman v. Charles City Police Dep’t*, 373 N.W.2d 90, 95 (Iowa 1985) (internal citation omitted). A temporary injunction may not be based merely on the allegations of an unverified petition; the issuance of a temporary injunction must be based on some evidence—an affidavit or sworn testimony or equivalent. *Id.* at 96. Debbie asserts the injunction “denie[d her of] her parental rights without the opportunity for a fair hearing.” Sworn testimony supported this injunction, which is very narrow in scope: it enjoined and restrained Debbie from removing the children from Shane’s care and enjoined both parents from taking the children without prior court approval. This does not deny Debbie a protected

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<sup>4</sup> We do note, however, that in her response to the motion, Debbie misstated to the court that the injunction was permanent, not temporary in nature. This misrepresentation likely led to our supreme court’s decision that “To the extent the appellant seeks to appeal the final order of protection and injunction, the court determines that part of the district court ruling is appealable as a matter of right.” See Iowa R. App. P. 6.104(2) (allowing appeals as a matter of right only from final decisions).

liberty interest as a parent, but rather preserves the status quo ordered in the temporary physical care order. Debbie points to no authority stating the lack of cross-examination renders the proceeding constitutionally inadequate. See *State v. Willard*, 756 N.W.2d 207, 214 (Iowa 2008) (setting forth our two-step procedural due process analysis). We find Debbie's due process argument is without merit.

*B. Injunction.*

Next, Debbie argues the district court erred in continuing the temporary injunction. As we have previously noted, temporary injunctions are interlocutory in nature; however, our supreme court has ordered the appeal of this injunction as a matter of right. See *N. Carolina Farm P'ship*, 672 N.W.2d at 723. "The issuance or refusal to issue a temporary injunction rests largely in the sound discretion of the trial court, and we will not ordinarily interfere with such ruling unless there is an abuse of discretion or a violation of some principle of equity."

*Kleman*, 373 N.W.2d at 96.

An injunction should be granted with caution and only when clearly required to avoid irreparable damage. A court of equity will not grant injunctive relief unless it appears there is an invasion or threatened invasion of a right, and that substantial injury will result to the party whose rights are so invaded, or such injury is reasonably to be apprehended. An injunction is appropriate only when the party seeking it has no adequate remedy at law. Before granting an injunction, the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief.

*Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995) (internal citations and quotation marks omitted). The injunction here simply preserved the already-ordered temporary physical care arrangement, and applied a moving restriction

to both parents. The children were acting out and exhibiting serious mental health issues; the eldest ran away to Debbie. We find the district court did not abuse its discretion in awarding a temporary injunction to prevent further upheaval in the children's living situation.

*C. Order of protection.*

Debbie next argues the district court improperly entered an order of protection under Iowa Code section 236.3 (2011) when there was no assault as required by statute.

To establish domestic abuse under Iowa Code chapter 232, a plaintiff must prove an assault as defined in Iowa Code section 708.1. Iowa Code § 236.2(2). Assault can be committed in several ways. The two alternatives most pertinent to the facts here provide:

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.

*Bacon ex rel. Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997) (quoting Iowa Code §§ 708.1(1), 708.1(2)).

We first turn to the addition of the children as "other protected persons" in the court's temporary and final orders. "[D]omestic abuse [under Chapter 236] can only occur between family and household members and the law expressly excludes from the definition of family or household members children" of the

household members under the age of eighteen.<sup>5</sup> *D.M.H. by Hefel v. Thompson*, 577 N.W.2d 643, 646 (Iowa 1998); see also Iowa Code § 236.2. We therefore vacate the order as to the children as protected parties.

As to the order protecting Shane, he argues, and the court found, that Debbie aided and abetted the parties' son to make the text-message threat to harm Shane and his wife. See Iowa Code § 703.1 (stating a person who aids or abets is punished as principal). While we give liberal construction to the domestic violence statute in chapter 236 to best effect its purpose, see *Wilker v. Wilker*, 630 N.W.2d 590, 596 (Iowa 2001), we find this interpretation attenuated under the record before us. Although the evidence shows Debbie communicated with the son before he texted the threat to his dad, and may have encouraged the son to act out in Shane's home, there is no evidence showing that she encouraged him to assault or threaten Shane.<sup>6</sup> In its protective order, the district court found Debbie aided the child "to threaten assaults" and the child had the ability to carry out the threats. It referenced its temporary physical care order in which the court concluded that "Debbie's contact with [the child] precipitated and aided and abetted him in committing an assault." The evidence does not support the court's aiding and abetting interpretation; nor does it support a finding of domestic abuse assault by Debbie on Shane. We vacate the order of protection.

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<sup>5</sup> "This, however, does not mean that these children have no protection against domestic abuse." *Thompson*, 577 N.W.2d at 646. Instead, there are appropriate proceedings in our juvenile system which can provide aid under that circumstance. See *id.*

<sup>6</sup> Although it could be argued that the child's actions met the definition of assault, no protective order was requested in juvenile court regarding the child's actions. See Iowa Code §236.3(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.").



Costs on appeal are assessed equally between the parties.

**AFFIRMED IN PART AND VACATED IN PART.**