

**IN THE COURT OF APPEALS OF IOWA**

No. 3-985 / 13-0753  
Filed December 5, 2013

**MELANIE L. DOYLE,**  
Plaintiff-Appellee,

**vs.**

**DANIEL B. DOYLE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Linn County, Marsha M. Beckelman, Judge.

The defendant appeals from the district court order extending a final protective order. **REVERSED.**

Karen A. Volz of Ackley, Kopecky & Kingery, Cedar Rapids, for appellant.  
M. Victoria Cole of M. Victoria Cole Law Firm, P.C., Cedar Rapids, for appellee.

Considered by Vogel, P.J., Mullins, J., and Goodhue, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

**GOODHUE, S.J.**

Daniel Doyle has appealed the trial court's ruling extending for another year the protective order issued to Melanie under Iowa Code chapter 236 (2011).

**I. Procedural Background**

Melanie Doyle filed for dissolution of the parties' marriage on November 15, 2011. Although there were two minor children born to the parties, ages three and four at the time of filing, no order relative to custody, visitation, or support was entered in the dissolution proceeding until March 20, 2012. The parties continued to reside together until January 20, 2012, when Melanie filed an independent petition for relief from domestic abuse under Iowa Code chapter 236, requesting a temporary protective order and temporary custody of the children. An ex parte order was entered granting both of her requests. A hearing on the final order of domestic abuse was set for February 3. Daniel was denied visitation until that date. The hearing on the final protective order was continued until March 20, 2012. The temporary order was modified on two occasions relative to custody and visitation prior to the hearing on the final order.

On January 27, 2012, Daniel filed an application requesting a temporary order regarding custody, support, and visitation of the minor children in the dissolution action. It was also set for hearing on March 20, and was held contemporaneous with the hearing relative to the final domestic abuse order. The issues raised by the application for a temporary order were to be based on affidavits only. Melanie's deposition was taken by David on March 8. The deposition was attached to Melanie's affidavit as a part of the proceeding in the dissolution action.

As a result of the hearing, a protective order against Daniel was entered as Melanie requested. Also as a result of the hearing, an order was entered in the pending dissolution granting the parties joint legal custody of the two children with physical custody of the children to Melanie. The order also set support and visitation, and granted Melanie occupancy of the marital residence. Unfortunately, trial of the dissolution was not set to be heard until March 25, 2014.

On March 18, 2013, Melanie requested the court to extend the chapter 236 protective order for another year and also requested that the parties be granted the right to communicate by email. After hearing, her requests were granted. It is that order entered April 16, 2013, which is the subject matter of this appeal.

## **II. Standard of Review**

Domestic abuse cases are heard in equity; therefore the court's review is de novo. *Wilker v. Wilker*, 630 N.W.2d 590, 594 (Iowa 2001). In equity, when considering the credibility of witnesses, the court gives weight to the fact finding of the district court, but is not bound by it. Iowa R. App. P. 6.904(3)(g).

## **III. Factual Background**

The initial ex parte protective order in this matter was requested almost two months after the plaintiff had filed her petition requesting dissolution of the marriage. The assault upon which the final protective order was based was an incident that took place on December 25, 2011, almost one month before Melanie requested a protective order. The court's finding regarding the assault is found in the order regarding temporary matters in the pending dissolution. The

chapter 236 domestic abuse case and the dissolution traveled in tandem, and the record provided to the court contains more information from the dissolution action than the domestic abuse case.

In its ruling the district court, after indicating that the parties had been having a disagreement, stated: “[T]his resulted in Dan throwing a blanket at Melanie, grabbing her by the shoulders, and causing her to fall to the floor. It ended with Melanie curled in a ball on a loveseat for protection with Dan standing over her shouting at her.” That is the sole act on which the protective order is based. There is no record of physical violence or threats of physical violence before or after that incident.

The request for the continuation of the protective order is based on letters, paper, and emails sent to and received by Melanie both before and after the protective order was entered. Some were from religious organizations offering to help her. The offers of help were sent after a request allegedly made by Melanie, but which she testified she never made. Some were allegedly from neighbors, in which she was referred to as “Melanoma,” “a cancer on our neighborhood,” a “liar” and “cheat,” and exhorted her to move. These unwanted communications continued as late as October of 2012. Daniel accused Melanie of having an affair and found it necessary to tell their friends and neighbors of his suspicions. He also confronted her alleged boyfriend’s family at one point and communicated his suspicions to Melanie’s mother, but there was no physical violence or other assault involved. There was no threat of physical violence in any of the communications Melanie received. Melanie did consider them harassment, and they undoubtedly were a nuisance to her.

Daniel denied he sent any of the unwanted materials or requested that they be sent. The trial court, in ruling on the motion to continue the protective order, stated with understanding insight,

While it is possible that a neighbor or neighbors might have participated in sending some of the correspondence received by Mrs. Doyle after the domestic abuse hearing, the court does not believe that Mr. Doyle had nothing to do with the letters. It is more likely than not that he had a hand in them . . . .

Daniel was not found to be a credible witness. This court concurs in those findings.

Melanie admitted she had been in Daniel's home with him as many as thirteen times since the protective order was entered. She also at one point asked him to drive her to work, and he complied with that request. Her reason for doing so was stated as follows: "I think it's unnatural for children to be in a situation where the parents are never, ever, ever, in the same space." Her reasons are very laudable, but there was a protective order between the parties.

#### **IV. Discussion**

Laying the credibility of Daniel aside, Iowa Code section 236.3 requires that the court must find the "defendant continues to pose a threat to the safety of the victim or their family" in order to extend a protective order beyond one year. The trial court recognized the requirement and determined the letters were "harassing in nature." The final domestic abuse order did prohibit Daniel from harassing Melanie, and if Daniel's involvement in the letters could have been established by the required quantum of proof, Daniel could have been found to have violated the protective order. Melanie did not proceed on that basis,

however, and such a violation does not necessarily support an extension of the order.

There were no threats of violence in any of the unwanted communications, and the last objectionable communication was in October 2012. There was no prior incident like the one present in *Sims v. Rush*, cited by Melanie, where a gun had been held to the victim's head. See *Sims v. Rush*, No. 10-0237, 2010 WL 3503943 (Iowa Ct. App. Sept. 9, 2011).

What makes the extension of the protective order even more problematic given the facts of this case is that Melanie ignored the court's protective order at will. She in effect aided and abetted Daniel's violation of the court order and may also have been subject to a claim of contempt. *Henley v. Iowa Dist. Ct.*, 523 N.W.2d 199, 202 (Iowa 1995). Her conduct placed Daniel in the precarious position of being subject to arrest at Melanie's command. Furthermore, it degrades and makes the court order, which Melanie is seeking to extend, somewhat meaningless if she can unilaterally decide when to enforce it and when to ignore it. This is particularly distressing since Melanie is an attorney. Finally, her conduct indicates that Melanie does not have much fear of Daniel. Her concern for the children is commendable, but the problem with which she is concerned is one that usually arises when a marriage is being dissolved and almost always arises when there is a protective order between the parents. The parents appearing together in a natural way with their children when a protective order between them is in place is hardly possible. Melanie indicates that the children were always present when she was at Daniel's house with him, but again, that would not afford much protection if a real sense of fear existed.

Protective orders must be supported by a preponderance of the evidence. Iowa Code § 236.4(1). The evidence that Daniel posed a threat to the safety of Melanie does not meet that burden.

**REVERSED.**