

**IN THE COURT OF APPEALS OF IOWA**

No. 7-667 / 07-0514  
Filed October 12, 2007

**CHARLOTTE RAY OWENS,**  
Plaintiff-Appellee,

**vs.**

**JERRY JOHN OWENS,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson, Judge.

Defendant appeals the district court's entry of a domestic abuse protective order. **AFFIRMED.**

Don M. Peterson, Council Bluffs, for appellant.

Matthew V. Stierman of Stierman Law Office, P.C., Council Bluffs, for appellee.

Considered by Huitink, P.J., and Vogel, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**ROBINSON, S.J.****I. Background Facts & Proceedings**

On December 27, 2006, Charlotte Owens filed a petition for relief from domestic abuse under Iowa Code chapter 236 (2005). She alleged Jerry Owens had been physically abusive to her prior to the parties' separation in May 2006. Her petition stated Jerry had, in the past, assaulted her by hitting her with his fists, and had dragged her into a room and confined her there against her will. She further alleged Jerry had "thrown her around," blackened her eyes, and knocked out teeth. She alleged that on the morning of December 27, Jerry had followed her car on the interstate, and this was frightening to her. As a result, she filed a petition for relief from domestic abuse. A temporary protective order was entered on the same day. The parties were divorced in January 2007.

A hearing in the 236 action was held on February 5, 2007. Charlotte testified to several recent incidents where she had felt threatened or intimidated by Jerry. Charlotte stated that on December 17, 2006, Jerry came into her home and called her a thief. She asked him to leave several times, but he refused until she called 911, and then he left. She stated that later he telephoned her several times leaving threatening messages, stating he was going to tell her employer she had committed forgery and fraud.

Charlotte testified that on December 26, Jerry drove around her workplace with a sign, yelling at people and asking if they knew Charlotte.<sup>1</sup> She stated that when she attempted to leave work, Jerry was parked at an intersection that she

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<sup>1</sup> The sign did not specifically name Charlotte, but implied things about her. Jerry stated the sign listed Charlotte's debts from 1995 to the present.

needed to cross to get her car. Although the lights changed, Jerry did not drive away. Charlotte called the police at that time.

Charlotte testified that on December 27, she was driving to work on the interstate, when Jerry drove up behind her going very fast and followed her for a while. She stated he then swerved around her while honking his horn. Jerry was towing a trailer with the sign.

Charlotte was asked if Jerry had done anything to her in the “last several months,” while the divorce was pending, to make her fear him. She testified Jerry got in her face and said, “Do you want to know what a real beatin’ is like? Let me give it to you.” During Jerry’s testimony he was asked, “Have you ever threatened her physically since December of 2006?” He answered, “no,” but in effect admitted to earlier assaultive behavior.

Jerry denied Charlotte’s version of the December 2006 incidents. He stated he was at Charlotte’s home on December 17, but left the second time she asked him. He stated he was not parked at her work on December 26 because he wanted to intimidate her, but because he was circling the block with his sign. Jerry stated he happened to get behind Charlotte on the interstate. He stated he telephoned her on her cell phone as he drove by, asking her if he had spelled everything correctly, because he was a terrible speller.

At the conclusion of the hearing the district court stated:

In a case like this, it becomes apparent that I need to decide who is telling the truth and who is not. And frankly in this case, Mr. Owens, you haven’t got much credibility with me. I don’t think you’re telling me the truth.

Based on the incident on the interstate, that alone would not cause me to find that there’s been any type of assault, simple or

otherwise, which would be considered a domestic assault. But based on the background and your lack of credibility with me, I'm going to find that you did commit a domestic assault.

The district court entered a final domestic abuse protective order, which is effective until February 5, 2008. The order prohibits Jerry from committing further acts of abuse or threats of abuse, and from having any contact with Charlotte. Jerry appeals.

## **II. Standard of Review**

This case was tried at law, and our review is for the correction of errors at law. Iowa R. App. P. 6.4. The district court's findings of fact are binding upon us if they are supported by substantial evidence. Iowa R. App. P. 6.14(6)(a). 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).

## **III. Merits**

Under Iowa Code section 236.5(2), a court may grant a protective order “[u]pon a finding that the defendant has engaged in domestic abuse.” The allegations of domestic abuse must be proven by a preponderance of the evidence. Iowa Code § 236.4(1); *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). The term “domestic abuse” includes an assault under section 708.1 between separated spouses.<sup>2</sup> Iowa Code § 236.2(2)(b). The pertinent provisions of section 708.1 defining assault are as follows:

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

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<sup>2</sup> The parties were still married, but were separated at the time of the incidents in this case.

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.

We, like the district court, do not find the traffic incident on December 27, 2006, rises to the legal definition of assault. See *Christenson v. Christenson*, 472 N.W.2d 279, 280 (Iowa 1991). However, Charlotte's unrefuted testimony that Jerry had gone face to face with her and threatened to beat her was clear evidence that Jerry did an act intended to place Charlotte in fear of immediate physical contact which would be painful or injurious, and there was apparent ability to execute the act.

We conclude there is substantial evidence in the record to support the district court's finding that Jerry committed domestic abuse. The district court has a much better opportunity to evaluate the credibility of witnesses than an appellate court. See *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996).

We affirm the district court's finding that Jerry engaged in domestic abuse, and affirm the permanent protective order.

**AFFIRMED.**