

**IN THE COURT OF APPEALS OF IOWA**

No. 9-027 / 08-0950  
Filed April 22, 2009

**CHRISTY MATTHEWS,**  
Petitioner-Appellant,

**vs.**

**CODY DESPLANQUES,**  
Respondent-Appellee.

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Appeal from the Iowa District Court for Greene County, Joel E. Swanson,  
Judge.

Appellant appeals the district court's order dismissing her petition for relief  
from domestic abuse. **REVERSED AND REMANDED WITH DIRECTION.**

Jennifer Donovan, Des Moines, and Michelle Mackel-Wiederanders of  
Iowa Legal Aid, Des Moines, for appellant.

Michael Tungesvik, Boone, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

**VOGEL, P.J.**

Christy Matthews appeals the district court's order dismissing her petition for relief from domestic abuse. She claims that the district court erred in (1) failing to find that Cody Desplanques committed domestic abuse assault, and (2) refusing to hear evidence of Desplanques's past acts of domestic abuse against her. We reverse and remand for a new trial.

**I. Background Facts and Proceedings.**

Matthews and Desplanques, although never married, have a daughter together, born in 2004. A consent decree entered in December 2007 provides Desplanques supervised visitation. Matthews claims that Desplanques has threatened and assaulted her during their interactions surrounding the visitations. She filed a petition for relief from domestic abuse on January 29, 2008, describing three specific instances when she was threatened or assaulted by Desplanques. During the first and second instance, Matthews maintains that Desplanques used intimidation tactics to frighten her, including blocking her car with his, and chasing her car with his, following only "inches from [the] bumper." On the third instance, Matthews claims that Desplanques came to her house, and upon encountering Matthews's friend, Joshua Smithson, started yelling threatening remarks while attempting to push past Smithson to enter Matthews's house.<sup>1</sup> Matthews's fears were based in part on Desplanques's past behavior and thus she had concerns that the situation was "escalating again [sic] and I need help before we get to that point again [sic]." The district court granted her a

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<sup>1</sup> Matthews alleged in her petition and later testified, "He threatened to break our necks if we showed up for visitation and he was threatening to kill us."

temporary protective order. After a trial on the merits on May 15, 2008, the district court found that Matthews's "testimony is void of any direct threats made by Cody Desplanques to her and his ability to carry out those threats." It therefore determined no domestic abuse assault occurred under Iowa Code chapter 236 (2007), as defined in section 708.1, and denied the petition. Matthews appeals.

## **II. Scope of Review.**

Whether the district court tried a proceeding in equity or at law is determinative of our scope of review on appeal. *In re Mount Pleasant Bank & Trust Co.*, 426 N.W.2d 126, 129 (Iowa 1988). If the district court tried the case at law, our review is for correction of errors of law. *Id.* at 129. If tried in equity, our review is de novo. Iowa R. App. P. 6.4. In a law action, the district court's findings of fact are binding upon us if those facts are supported by substantial evidence. *Id.* at 6.14(6)(a). Evidence is substantial if reasonable minds could accept it as adequate to reach the same findings. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996). Generally, civil domestic abuse cases are heard in equity and, thus, warrant a de novo review. *See Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa 1994). But, where there is uncertainty about the nature of a case, an often used litmus test is whether the trial court ruled on evidentiary objections. *Citizens Sav. Bank v. Sac City State Bank*, 315 N.W.2d 20, 24 (Iowa 1982). When a trial court does rule on objections, it is normally the hallmark of a law trial, not an equitable proceeding. *Sille v. Shaffer*, 297 N.W.2d 379, 381-82 (Iowa 1980).

In this case, the district court did hear and rule on evidentiary objections during trial. The sustaining of some evidentiary objections precluded the admission of the evidence subject to the objection, and thus the record is not complete for a de novo review. See *Leo v. Leo*, 213 N.W.2d 495, 497-98 (Iowa 1973) (explaining that in equity proceedings all evidence offered must be received, any objections will be noted and the answers thereafter given will be subject to the objection). We therefore conclude that this action was tried at law. The fact findings will be reviewed on a substantial evidence standard, and evidentiary issues for an abuse of discretion. Iowa R. App. P. 6.14(6)(a); *Chrysler Financial Co. v. Bergstrom*, 703 N.W.2d 415, 418 (Iowa 2005) (findings of fact); *McElroy v. State*, 637 N.W.2d 488, 493 (Iowa 2001) (evidentiary issues).

### **III. Excluded Evidence of Prior Bad Acts.**

Matthews contends that Desplanques committed domestic abuse assault, and the district court erred in failing to grant a protective order. She asserts that relevant evidence of Desplanques's prior abuse of her and subsequent arrests were improperly excluded from evidence, and the case should be remanded for a new trial to allow the admission of such evidence.

When Matthews was attempting to testify as to Desplanques's prior assaultive conduct and a prior restraining order, Desplanques objected on relevancy grounds and was allowed to briefly voir dire Matthews. Matthews's attorney responded that prior acts of domestic violence, threats, and related arrests were relevant to demonstrate that Matthews would have found the current threats "to be credible and that [Desplanques] would indeed be capable of carrying those out." The court ruled, "I'm not quite sure what relevance 2006

events would, because the petition was filed alleging current events. I think we ought to stick to that, so that's sustained."<sup>2</sup>

Evidence is "relevant" if it makes "the existence of any fact that is of consequence . . . more probable or less probable than it would be without the evidence." Iowa R. Evid. 5.401. Relevancy refers to its probative value in relation to the purpose for which it is offered. *State v. Clay*, 213 N.W.2d 473, 477 (Iowa 1973). Relevant evidence is generally admissible. Iowa R. Evid. 5.402. While evidence of prior bad acts is not admissible to prove the character of a person to show that the person acted "in conformity therewith," the evidence may be admissible for other purposes such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *Clarey v. K-Products, Inc.*, 514 N.W.2d 900, 903 (Iowa 1994) (quoting Iowa Rule of Evidence 5.404(b)).

Hearings on allegations of assault brought through a petition for relief of domestic abuse under Iowa Code chapter 236 tend to be less formal than when similar allegations are brought by the State in a criminal proceeding. *Knight*, 525 N.W.2d at 843. Although the elements of assaultive conduct defined in Iowa Code section 708.1 are the same whether brought in a civil petition or a criminal indictment, the burden of proof under chapter 236 is by a preponderance of the evidence while in a criminal proceeding the standard is beyond-a-reasonable-doubt. Compare Iowa Code § 236.4(1) (preponderance of the evidence), with § 701.3 (beyond a reasonable doubt). Because assault is a specific intent crime under Iowa Code section 708.1, even in the civil arena, evidence of the

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<sup>2</sup> Similar objections and rulings were made during the trial.

aggressor's past relationship with the petitioner may supply the necessary proof of the intent element of the statute.<sup>3</sup>

In order to be granted a protective order under Iowa Code chapter 236, Mathews needed to first prove her "domestic" relationship with Desplanques. Iowa Code § 236.2(2). There was no dispute as to this element. Next, she needed to prove by a preponderance of the evidence that Desplanques committed an assault as defined by Iowa Code section 708.1. The district court considered these statutory factors:

- (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.
- (3) Intentionally points any firearm toward another, or displays in a threatening manner any dangerous weapon towards another.

Iowa Code § 708.1. Therefore, according to the allegations in Matthews's petition, she needed to prove that Desplanques intended to place her in fear of immediate, injurious physical contact. While the district court could have found this was satisfied by the testimony offered, it did not find the evidence sufficient. However, had the court received the evidence of Desplanques's past conduct, as

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<sup>3</sup> Assault is a specific-intent crime; even though statute introduces the definition of assault with a statement that an assault is a general intent crime, it does not alter the substantive content of the statute as it pertains to the elements of the crime. *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003).

referenced in Matthews's petition, the court may have found there was sufficient evidence to grant the petition for relief.<sup>4</sup> The limited information in the record suggests Desplanques acted with the requisite intent to place Matthews in fear of physical contact causing pain or injury. Thus, the excluded evidence of Desplanques's prior abusive conduct towards Matthews is relevant to and would support an element of assault: whether he intended to place Matthews in fear of painful or injurious physical contact. See *State v. Taylor*, 689 N.W.2d 116, 125 (Iowa 2004) (stating that a person's prior conduct directed towards another, whether loving or violent, reveals the emotional relationship and is highly probative of the probable motivation and intent in subsequent situations).

When a case is tried at law, our next step would be to consider whether the admission of otherwise relevant evidence can withstand the test of being more probative than prejudicial under Iowa Rule of Evidence 5.403. *State v. Newell*, 710 N.W.2d 6, 22 (Iowa 2006). However, we need not take that step as we find the district court abused its discretion in excluding, on relevancy grounds, evidence of Desplanques's prior abusive conduct towards Matthews and his related arrests.

The decision of the district court is reversed and the case is remanded for a new trial. Because the petition was brought as an equitable proceeding, the case should be retried in equity, and any relevant evidence objected to should be

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<sup>4</sup> Part of Matthews's petition read:

In the past he was arrested twice for domestic assault. I had a restraining order. He was charged with unlawful detention but several things took place he poured gas on me, threatened me with live electrical wires, sexual assault, swung a machete at me stuck a knife in the wall by my head. I had bruises and I just don't want a repeat of the past. This is escalating again [sic] and I need help before we get to that point again [sic].

admitted, subject to the objection, to create a record which, if appealed, is reviewable de novo. See *Leo*, 213 N.W.2d at 498 (“This procedure allows the appellate court, if it finds error in its de novo review, to decide the case on the record without a remand.”). On remand, the court should consider relevant evidence of Desplanques’s past conduct towards Matthews, as well as Desplanques’s related arrests. This will allow the court to evaluate the history of the Matthews/Desplanques relationship and decide whether Desplanques had the requisite “intent” as well as the “ability to execute the current act” under Iowa code section 708.1

**REVERSED AND REMANDED WITH DIRECTION.**