

IN THE COURT OF APPEALS OF IOWA

No. 9-280 / 08-1397
Filed June 17, 2009

JILL ANN HITTLE,
Plaintiff-Appellee,

vs.

CHARLES WILLIAM HESTER,
Defendant-Appellant.

Appeal from the Iowa District Court for Des Moines County, Cynthia H. Danielson, Judge.

Defendant appeals the district court's ruling finding he committed domestic abuse assault against the plaintiff. **AFFIRMED.**

Scott E. Schroeder of Schroeder Law Office, Burlington, for appellant.

Jill Hittle, Burlington, pro se.

Considered by Sackett, C.J., and Vogel and Miller, JJ.

SACKETT, C.J.

Defendant, Charles Hester, appeals from the district court's ruling finding that he committed domestic abuse assault upon the plaintiff, Jill Hittle, and imposing a permanent protective order pursuant to Iowa Code chapter 236 (2007). We affirm.

I. BACKGROUND.

Charles and Jill met in August of 2007 and dated off and on until July 11, 2008, the day of the alleged abuse. At the time, Jill was living with Charles at his house but by both accounts, they were not on friendly terms. In fact, Charles had given Jill a thirty-day notice to vacate the premises three days before the alleged incident of abuse. Nonetheless, while Jill was still living there, they continued to share a bed. Jill testified on the night of July 11, 2008, Charles came into the bedroom and dumped a glass of water on her and said, "oh sorry, that was an accident." Then when they were lying in bed, she claimed Charlie moved on her side of the bed, pushing her with his knees. He refused to move over even when she asked him repeatedly. Fearing she would fall on the floor, she made an effort to crawl over Charles without making contact to get to the other side of the bed where there was more room. She contended in the process, Charles shoved her off the bed and she landed on a trash can. Both called the police after the incident but no charges were filed. Charles left the house and stayed with his brother.

Three days later, on July 14, 2008, Jill filed the petition for relief from domestic abuse, and Charles was arrested and charged with domestic abuse

assault. The criminal charge was later dismissed at the request of the State. Charles sought to dismiss the petition denying he committed an assault against Jill. The matter came on for hearing on July 28, 2008. At the trial, Charles denied ever dumping water on Jill. He did agree that on the night of the alleged abuse, they were lying in bed bickering about how the other was encroaching on his or her side of the bed. Charles claimed Jill fell on the floor because there was no room on his side after she crawled over him. He testified he rolled at the same time as her so as to avoid bearing her full weight and there was contact between them. However, he claimed he had no intent to harm, offend, scare, or intimidate her when it happened. Following the hearing, the district court issued a final domestic abuse protective order, finding defendant did commit domestic abuse assault under Iowa Code chapter 236. Charles appeals.

II. STANDARD OF REVIEW.

Charles contends our standard of review is de novo because the case was tried in equity. In reviewing the record, we note the court ruled on at least one objection, and therefore the action was tried at law and our review is for errors at law. See *Bacon ex rel. Bacon v. Bacon*, 567 N.W.2d 414, 417 (Iowa 1997). In this action, the court's findings of fact are binding on our court if supported by substantial evidence. Iowa R. Civ. P. 6.14(6)(a). Evidence is substantial when a reasonable person would accept it as adequate to reach a conclusion. *Land O' Lakes, Inc. v. Hanig*, 610 N.W.2d 518, 522 (Iowa 2000).

III. MERITS.

When a court finds a defendant has engaged in domestic abuse, it may issue a protective order and grant other relief. See Iowa Code § 236.5. The plaintiff bears the burden of proving the allegations of domestic abuse by a preponderance of the evidence. *Id.* § 236.4(1); *Wilker v. Wilker*, 630 N.W.2d 590, 596 (Iowa 2001). Under chapter 236, “domestic abuse” occurs when a person commits an assault, as defined by section 708.1, under certain circumstances, such as assaulting a household member. Iowa Code § 236.2(a); *Christenson v. Christenson*, 472 N.W.2d 279, 280 (Iowa 1991). Section 708.1 provides in relevant part,

An assault as defined in this section is a general intent crime. 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.

Although the statute’s introduction describes assault as a general intent crime, the Supreme Court has held that this language does not alter the substantive elements of the crime, and specific intent remains a required element. *Wyatt v. Dep’t of Human Servs.*, 744 N.W.2d 89, 94 (Iowa 2008); *State v. Bedard*, 668 N.W.2d 598, 601 (Iowa 2003). To support a conviction for assault, there must be proof that the defendant did an act he intended either: (1) to cause pain or injury, (2) to make insulting or offensive physical contact, or (3) to make the victim fear immediate painful, injurious, insulting, or offensive physical contact. *State v.*

Keeton, 710 N.W.2d 531, 534 (Iowa 2006). The requisite intent may be inferred from the circumstances and the defendant's actions. *Id.*; *State v. Taylor*, 689 N.W.2d 116, 132 (Iowa 2004). An actor will generally be "viewed as intending the natural and probable consequences that ordinarily follow from their voluntary acts." *Bedard*, 668 N.W.2d at 601; *Taylor*, 689 N.W.2d at 132.

Charles contends (1) there was insufficient proof to support the court's finding that he committed an assault, and (2) the court failed to make a finding as to Jill's credibility. By virtue of our limited standard and scope of review in this case, we conclude there is substantial evidence to support the court's finding of domestic abuse assault. We are required to view the evidence in a light most favorable to the judgment. *Claus v. Whyte*, 526 N.W.2d 519, 523 (Iowa 1994). We cannot ask whether the evidence supports a different finding, but instead must evaluate whether the evidence supports the findings actually made. *Tim O'Neill Chevrolet, Inc. v. Forristall*, 551 N.W.2d 611, 614 (Iowa 1996).

Charles admits there was physical contact between himself and Jill. He admits their relationship was tense because he wanted her to move out. At the time, they were arguing over space in the bed, which, according to both parties' testimony, was a recurring dispute. Charles's actions reasonably could be viewed as an attempt to force Jill to fall off the bed to prevent her from accessing bed space. The evidence could support an inference of intent to make insulting or offensive contact with Jill.

Charles contends the court should have made a finding as to Jill's credibility or lack thereof. He argues Jill sought the protective order as a way to

remain in Charles's home when he had given her a notice to vacate the residence. Although we find some merit in this argument, the court's conclusion shows it implicitly accepted Jill's testimony. "[T]he trier of fact, in this case the trial court, has the prerogative to determine which evidence is entitled to belief." *Claus*, 526 N.W.2d at 524. It has a better opportunity to evaluate credibility. *Id.* We therefore affirm the district court.

AFFIRMED.