

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-474

FEBRUARY TERM, 2005

Olena Strzelec	}	APPEALED FROM:
	}	
	}	
v.	}	Rutland Family Court
	}	
Francis Joseph Strzelec	}	DOCKET NO. 396-9-04 RcFa
	}	
		Trial Judge: Thaddeus Lorentz

In the above-entitled cause, the Clerk will enter:

Wife appeals from a family court order denying her petition for relief from abuse. She contends: (1) the court's findings were inadequate; and (2) the court erroneously excluded evidence of husband's prior abusive conduct. We affirm.

The record evidence may be summarized as follows. Wife is a citizen of Ukraine. She met husband, who is from Vermont, while he was visiting the Ukraine, and returned with him to Vermont on a 90 day visa in November 2003. The parties were married in January 2004. The parties resided in husband's West Rutland home until July 2004, when wife filed a petition for relief from abuse and husband filed a complaint for divorce. Following a hearing on the petition, the parties reconciled. The court dismissed the petition, husband dismissed the divorce action, and the parties resumed living together in West Rutland.

On the evening of September 1, 2004, wife filed another petition for relief from abuse, alleging that she and husband had engaged in an argument and that husband had pushed her against a door frame, resulting in a head injury. The court issued wife a temporary order for relief from abuse, and later held a hearing on the final petition that extended over parts of two days. Wife testified that on the evening of September 1, the parties had argued, that husband had attempted to hug her, that she resisted, and that a physical struggle ensued in which husband knocked her head into a door frame. She testified that husband attempted to restrain her from calling the police, tearing off her shirt and panties in the process, and that she ran outside. When she attempted to re-enter to retrieve her cell phone she found the doors locked, so she used a hammer to break in. The police arrived shortly thereafter.

Husband's testimony described an entirely different scenario. He testified that wife was acting strangely when she arrived home from work on the morning of September 1 (wife worked the night shift at a nursing home). According to husband, wife began yelling and demanding that he place her name on the deed to the house. When he failed to comply, she began pounding her head against the wall, threatening that she would call 911 and send him to jail. Husband left shortly thereafter and visited the Rutland State Police office to ask for advice. A state trooper confirmed that husband had visited the office at about 10:00 a.m., and had reported that his wife was acting strangely, banging her head against the wall, stating that she would not divorce him but would make his life miserable, and threatening to call the police if her name was not put on the house deed. The officer advised husband to return home.

Husband testified that later that evening, wife became angry at him for touching her cell phone, threatened him

with a letter opener, and chased him outside the house. He went back inside and locked the doors. Wife was locked out, but used a hammer to break in, whereupon husband ran outside again. At that point a police officer arrived and entered the house, locating wife inside. The officer testified that wife appeared to be shaken and “terrified.” The officer located wife’s panties on the floor, noting that they were not ripped or torn. The officer later observed a reddish bump on wife’s forehead that appeared to be fresh. A worker from the women’s shelter where wife spent the night testified that wife reported several bruises on her back and scratches on her arm. Several photographs taken a couple of days after the incident appear to show bruises on wife’s back and sides.

At the conclusion of the hearing, the court entered several brief findings on the record. The court observed that much of the evidence was conflicting and confusing, but noted that the state trooper had corroborated husband’s claim to have reported wife’s unusual behavior and threats earlier that morning. The court concluded that it was unable to find that husband had precipitated the incident or acted “in a way that comes within the meaning of the statute.” Wife’s attorney asked for clarification as to whether the court had made a finding that husband had caused wife’s injury by pushing her into a door frame. The court responded that it could not “make the finding that [husband] was the one that caused that injury.” Counsel then asked for a finding as to whether husband had caused wife’s bruises, and again the court responded that it could not make such a finding based on all of the testimony. Accordingly, the court denied wife’s request for a final relief from abuse order. This appeal followed.

Wife contends the court’s findings were inadequate because they failed to specifically address the cause of the incident or account for wife’s bruises and scratches. We have held that detailed findings in relief from abuse proceedings are unnecessary and inconsistent with the expedited nature of the proceedings. Benson v. Muscari, 172 Vt. 1, 6 (2001). This case was largely a credibility contest between the parties. The court’s findings, however brief, plainly show that it did not find wife’s testimony to be sufficiently credible to support a finding that husband had caused her injuries. While not a model of clarity, the findings are sufficient to explain the court’s reasoning and provide a basis for appellate review. That is all we require. See Secretary, Vt. Agency of Natural Resources v. Irish, 169 Vt. 407, 419 (1999) (court must make findings necessary to support conclusions, resolve issues, and provide adequate basis for appellate review). Moreover, we note that the trial court was best positioned to assess the weight of the evidence and the demeanor and credibility of the witnesses, and we may not, therefore, disturb its findings unless clearly erroneous. Begins v. Begins, 168 Vt. 298, 301 (1998). Confronted with sharply conflicting testimony, and at least some evidence tending to support husband’s version of the events in question, the court was within its discretion in determining that wife’s testimony was not sufficiently credible to support a finding that husband had caused her injuries.

Wife also contends the court erred in failing to make specific findings addressed to whether she had been placed in “fear of imminent serious physical harm,” under 15 V.S.A. § 1101(1)(B). She relies on her affirmative response when asked by counsel whether she “fear[ed] that [husband] will hurt you again.” Although the court did not make specific findings on this point, it did find that the evidence was insufficient to prove by a preponderance that husband had “responded in a way that comes within the meaning of the statute.” Absent any specific request for findings, this was sufficient. Furthermore, in finding that the evidence was insufficient to support the assault allegation, there was no evidentiary basis for a finding that husband would “hurt [her] again.”

Finally, wife contends the court abused its discretion in excluding wife’s testimony about the incidents that led to her filing an earlier request for relief from abuse in July 2004. She contends the evidence was relevant to support a theory of abuse based on fear of imminent serious physical harm. The court enjoys broad discretion to determine the admissibility of alleged prior instances of misconduct, and wife has not demonstrated that the court abused its discretion in this instance. Sweet v. Roy, 173 Vt. 418, 434 (2002). The principal focus of wife’s allegations, request for relief from abuse, and testimony was that she had been assaulted. There was also some testimony that the assault of September 1 had left wife in fear of further harm. Thus, it was reasonable for the court to rule that the focus of the evidence should remain on the events of the September 1, and whether the evidence was sufficient to prove that husband had committed the alleged assault. Accordingly, we discern no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned