ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-472

APRIL TERM, 2009

Kristen Place	}	APPEALED FROM:
	}	
v.	}	Franklin Superior Court
	}	
Larkin Forney	}	DOCKET NO. S24-08 Fsa
		Trial Judge: A. Gregory Rainville

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

Defendant appeals from the superior court's final order against stalking or sexual assault, which requires defendant to stay 300 feet away from plaintiff, her residence, and her place of employment. We affirm.

Plaintiff filed a request for a no-stalking order on October 21, 2008 in superior court. The court held a hearing on November 7, 2008 at which both parties were present and testified. At the hearing, defendant admitted to pleading guilty to sexual assault against plaintiff in 2005 and to sending emails to plaintiff on September 20 and 28. Defendant testified that he did not send the emails to cause plaintiff distress; rather, he wanted to find plaintiff's father's address to file a lawsuit against him. Based on the testimony, the court found that defendant had been convicted of sexually assaulting plaintiff. The court further found that defendant sent plaintiff two emails that "taken together, unsolicited, could be highly anguishing to the recipient, and certainly could cause her a significant amount of emotional and mental distress, and could be interpreted as threatening, given the context of the prior relationship." Thus, the court ordered defendant to stay 300 feet away from plaintiff.

Defendant, appearing pro se, appeals the order. Defendant argues that the court erred in granting the order because plaintiff is not truthful and plaintiff admitted that the only contact defendant had with her was through email. Defendant also claims that the court erroneously granted the protective order because his underlying sexual assault conviction is based on an allegedly invalid plea agreement and because plaintiff only filed for the protective order to help her friend, who is the mother of defendant's daughter, in her custody dispute with defendant. We conclude that the superior court did not err in granting plaintiff's request for a protective order.

Under the statute, a person applying for a protection order has the burden of proving by a preponderance of the evidence that the defendant stalked or sexually assaulted her. 12 V.S.A. § 5133(b). Following notice and a hearing, "[i]f the court finds by a preponderance of evidence

that the defendant . . . has been convicted of sexually assaulting the plaintiff, the court shall order the defendant to stay away from the plaintiff . . . and may make any other such order it deems necessary to protect the plaintiff." Id. § 5133(d)(1).

Despite defendant's contention that plaintiff is not credible, there was sufficient evidence in this case for the family court to make the necessary findings under the statute.

> In matters of personal relations, such as abuse prevention, the family court is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing. As such, we review the family court's decision to grant or deny a protective order only for an abuse of discretion, upholding its findings if supported by the evidence and its conclusions if supported by the findings.

Raynes v. Rogers, 2008 VT 52, ¶ 9 (citation omitted). The court's findings that defendant had been convicted of sexually assaulting plaintiff and had sent plaintiff emails were supported by defendant's own admissions. While defendant seeks to excuse his conviction and the content of the emails for various reasons, these facts are not relevant under the statutory scheme. Once the court found that defendant had been convicted of sexually assaulting plaintiff, there was ample authority under the statute for the court to order defendant to stay away from plaintiff.

We find no merit to defendant's argument that the court's order is invalid because plaintiff allegedly had a bad motive in filing the complaint. According to defendant, plaintiff filed her complaint as part of a conspiracy with the mother of defendant's child. Again, plaintiff's motive in filing the complaint is irrelevant to the court's authority to grant the order of protection under the statutory scheme.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice