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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-107

DECEMBER TERM, 2003

Ann Marie Hanson	}	APPEALED FROM:
	}	
v.	}	Rutland Family Court
	}	
Paul Burroughs	}	DOCKET NO 39-1-03RaFa
	}	
	}	Trial Judge: William D. Cohen
	}	
	}	
	}	

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

Father appeals a final relief-from-abuse order, arguing that the family court erred by not allowing his twelve-year-old daughter to testify, by finding that he abused mother, and by awarding mother temporary custody of the children. We affirm.

At the time of this proceeding, the parties had been living together for approximately six years. They have two children from the relationship, one born in August 1997 and the other born in June 1998. Father also has a daughter from a previous relationship who was living with the parties. Over the years, the parties have had a stormy relationship marked by numerous court appearances. Mother initiated the instant proceeding after father allegedly threatened her late one night at her sister= s house. Following a final relief-from-abuse hearing in February 2003, the family court issued an order finding that father had abused mother by placing her in fear of imminent serious physical harm, and that there was a danger of further abuse. The order, which was to remain in effect for one year, forbid father from placing himself within one hundred feet of mother. The order also gave mother parental rights and responsibilities over the parties= two children, with father having contact Thursday through Sunday every other weekend.

Father first argues that the family court erred by refusing to allow his twelve-year-old daughter to testify. According to father, the court mistakenly believed that unless his daughter was represented by an attorney and a guardian ad litem, her appearance as a witness was precluded by V.R.F.P. 7(e) (court shall appoint guardian ad litem in V.R.F.P. 4 proceeding) and 15 V.S.A. ' 594(b) (court shall appoint attorney for minor child before child is called as witness in divorce or parentage proceeding). Father misstates the court= s position. The court acknowledged that neither Rule 7(e) nor ' 594(b) appeared to be controlling in this case, but nonetheless concluded that caution should be exercised before allowing a child witness to testify in a relief-from-abuse proceeding. We find no abuse of discretion. Father= s offer of proof as to the relevance of his daughter= s testimony was vague for the most part. There was no indication that the child observed any of the incidents that led to mother= s petition. Father suggested only that his daughter would be able to testify as to mother= s claims that she was the children= s caretaker and that father was rarely around the home. Relief-from-abuse proceedings sometimes require temporary custody orders but are generally an ill-suited forum for making permanent custody determinations, which are better resolved in divorce or parentage proceedings. Rapp v. Dimino, 162 Vt. 1, 5 (1994). We agree with the family court that any relevance the daughter= s testimony may have had in this relief-from-abuse proceeding pales in comparison to the potential harm from entangling the child in the parties= acrimonious and ongoing legal skirmishes. See Davis v. Hunt, 167 Vt. 263, 268 (1997) (family court has discretion to exclude testimony that is irrelevant, cumulative, or unduly prejudicial).

Next, father argues that the evidence did not support the family court= s finding of abuse. We recognize that mother= s evidence of abuse was sketchy and poorly presented, due in part to her pro se status. We conclude, however, that there

was sufficient evidence to support the court= s finding that father had placed mother in imminent fear of serious bodily harm. See 15 V.S.A. ' 1101(1)(B). Mother testified that father had threatened her life on numerous occasions, and that his threatening behavior had escalated recently. According to her affidavit, only two days before the incident that led to her filing the relief-from-abuse petition, father had spit on her and struck her in the head while attempting to knock her hat off. She also testified that he had fired his hunting rifle near the house to intimidate her. She filed the petition after father drove to her sister= s residence late one night and telephoned her from his truck outside the house, calling her vulgar names and telling her A that this was going to be it.@ She testified that she felt threatened and endangered by father= s increasingly erratic behavior, which included barricading her in a room with leftover tiles from a remodeling project. After hearing the testimony of seven witnesses, the court concluded that, given the tumultuous history of the parties and the circumstances surrounding father= s threats, father= s actions reasonably placed mother in imminent fear of serious bodily harm. The record supports this finding.

Finally, father challenges the court= s decision to give mother parental rights and responsibilities over the parties= two children. As noted above, abuse proceedings are ill-suited for permanent resolution of custody matters. Rapp, 162 Vt. at 4-5. Here, a custody order was necessary because the parties were no longer going to be living together, and mother intended to leave for Virginia within a matter of days to stay with her mother. She was unable to stay in Vermont because she did not have a home or a car or sufficient funds to provide either. Under these circumstances, the record supports the court= s decision to grant mother temporary custody of the parties= two young children, particularly considering that mother had been the children= s primary care giver. See id. at 5 (A Nonabusive family members should not have to risk losing custody of their children to seek relief under the statute.@). In any event, father= s challenge to the abuse order= s custody provision appears to be moot insofar as the parties are also resolving custody issues within the context of an ongoing parentage action and have recently stipulated that the children would reside with father in Vermont.

Affirmed.

BY THE COURT:

_____

Jeffrey L. Amestoy, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice