

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2004-042

AUGUST TERM, 2004

	}	APPEALED FROM:
	}	
Shelly Bonk	}	Franklin Family Court
	}	
v.	}	DOCKET NO. 381-12-03 Frfa
	}	
Marcel Charbonneau	}	Trial Judge: Jane Dimotsis
	}	
	}	

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

Defendant appeals from a final relief-from-abuse order of the Franklin Family Court. He contends the court erred because: (1) there was no threat of imminent serious physical harm directed at the complainant; (2) the evidence did not support a finding that the complainant had a reasonable fear of imminent serious physical harm; (3) the evidence did not show that there was a danger of further abuse; and (4) there was no basis to include the parties' child within the order. We affirm.

As disclosed at the final relief-from-abuse hearing and found by the trial court, the facts are as follows. Although never married, defendant and the complainant are the biological parents of a minor, born in 1993. Defendant had little or no contact with the minor for several years prior to the events in question. In September 2003, complainant obtained a judgment against defendant for child support arrears in excess of \$7000. Defendant was arrested for non-payment in October, and thereafter satisfied the judgment. On December 1, 2003, defendant went to the Town of Richford, where the complainant lives and works, and unsuccessfully attempted to obtain the minor's school records. Two days later, on the afternoon of December 3, the complainant observed defendant park in front of her place of business, a hair salon, where he proceeded to take pictures of the business. He then pulled away, only to drive by again several minutes later, waving at her through the driver's window.

Complainant became alarmed because defendant had expressed anger at the minor's use of complainant's husband's last name and the recent child support judgment. She testified without contradiction that defendant had threatened to "see [the minor] dead" before he used the last name of complainant's husband. She was also aware that defendant had visited the minor's school the day before to obtain school records, and had once threatened to take the child out of the country. Accordingly, she asked one of her business patrons to make sure that defendant did not follow the child home from his school bus. The patron returned shortly thereafter to report that she had observed defendant taking photographs of complainant's home and the home of complainant's mother, who lived nearby. Complainant then observed defendant drive by her place of business again, when he honked the horn to get her attention.

Fearful and alarmed, complainant called her husband at his place of business to report her observations. Complainant's husband immediately drove into town, where he observed defendant in a McDonald's parking lot. He approached defendant's car to make sure that the child was not in it. Because the windows were tinted, he attempted to open the passenger door. As this occurred, defendant accelerated rapidly and drove off. Complainant's husband followed in his pick-up, at which point defendant pointed a gun out of his car window in the direction of complainant's husband. Although defendant claimed that the use of the gun was in self-defense, he acknowledged " and the court found " that complainant's husband had not physically or verbally assaulted defendant.

In her affidavit and at trial complainant stated that she was fearful for herself and the child in light of: defendant' s anger about the child support judgment and the child' s use of her husband' s last name; defendant' s conduct in repeatedly cruising past her place of business, waving and honking; defendant' s visit to the child' s school after years of non-contact; defendant' s pointing a gun at her husband; defendant' s earlier verbal threats against the minor; and, as complainant related in her affidavit, " the many incidents of abuse when we were together." Based on this evidence, the court found that defendant had abused complainant by placing her " in fear of imminent serious physical harm," 15 V.S.A. § 1101(1)(B), and issued a final relief-from-abuse order in favor of complainant and the minor. This appeal followed.

Defendant contends the court erred in relying on his use of a gun because it was pointed only at complainant' s husband. In a relief-from-abuse hearing, the plaintiff has the burden of proving abuse by a preponderance of the evidence. Coates v. Coates, 171 Vt. 519, 520 (2000) (mem.). The court' s factual findings in this regard will be upheld if supported by credible evidence, and its conclusions will be affirmed if supported by the findings. Id. In relief-from-abuse, as in other proceedings, the trial court is uniquely situated to assess the credibility of witnesses and weigh the evidence. Begins v. Begins, 168 Vt. 298, 301 (1998). Assessed in light of these standards, we conclude that the evidence " viewed in its entirety " was sufficient to support the judgment. The standard is whether defendant placed the complainant in fear of imminent serious physical harm, and we find nothing in the statute or the case law requiring that the complainant be physically present for the threat. In view of complainant' s allegation of prior incidents of abuse, defendant' s anger over the recent child support judgment and threats against the minor, defendant' s actions in driving repeatedly past complainant' s home and business, and defendant' s recent threat against her husband with a gun, complainant could reasonably fear that defendant would also use the weapon against her and her child. Accordingly, the evidence supported the court' s finding that defendant had placed complainant in fear of imminent serious physical harm.

Defendant further contends that the evidence does not support a finding that complainant had a reasonable fear of imminent physical harm, arguing that his display of the weapon was in self-defense and observing that complainant' s husband continued to follow him, suggesting that even he was not placed in fear of physical harm. Although defendant claimed self-defense at the hearing, his testimony was contradicted by that of complainant' s husband, who stated that he had not threatened defendant in any way and that he feared for his life when confronted with the weapon. The trial court was entitled to credit this testimony. Id. Defendant also claims that his actions in driving by complainant' s home and business and taking photographs were motivated by a legitimate desire to gather evidence for a motion to modify child support, and could not reasonably be construed as threatening. Viewed in the context of defendant' s anger over the recent child support judgment and the minor' s use of complainant' s husband' s last name, the threats against the minor, and the relative lack of prior contact, we conclude that defendant' s actions could reasonably be construed by complainant as threatening.

Defendant further contends there was no evidence of a " danger of further abuse," as required under 15 V.S.A. § 1103(c). The court reasonably concluded otherwise, however, noting defendant' s continuing agitation over the minor' s use of complainant' s husband' s last name, and the on-going child support conflict. See Coates, 171 Vt. at 520 (findings will be upheld if supported by credible evidence, and conclusions will be upheld if supported by findings).

Finally, defendant contends the court erred in including the minor within the relief-from-abuse order. We have held that the abuse-prevention statute authorizes the court to include the plaintiff' s child in the order where, as here, credible evidence supports a finding of threats to the parent. Benson v. Muscari, 172 Vt. 1, 6-7 (2001). Furthermore, mother stated that defendant had made threats against the child in the past, and his anger was focused on both complainant and the child. Accordingly, we discern no error.

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice