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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-243

DECEMBER TERM, 2007

Dominic Solemno	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Family Court
	}	
	}	
Jimmie Phillips	}	DOCKET NO. 267-5-07 Cnfa
		Trial Judge: Geoffrey W. Crawford

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

Defendant appeals from a final relief-from-abuse order issued by the family court in favor of plaintiff. Defendant asserts that the evidence and findings were insufficient to support the court's conclusion that he placed plaintiff in fear of imminent serious physical harm. We reverse.

Plaintiff testified that, on May 20, 2007, he drove into the parking lot of the Lincoln Inn to meet his mother. As he parked toward the rear of the lot, plaintiff observed a vehicle driven by defendant, his father-in-law, pull in directly behind him, blocking him in. Plaintiff then observed defendant "reaching for something." Plaintiff testified that defendant had followed him and threatened to kill him in the past, that he had changed cars as a result, and that he therefore "wasn't about ready to find out what this was about." Accordingly, plaintiff pulled his car forward, backed onto the grass, and "floored it out of the parking lot." Plaintiff stated that defendant, in response, followed him out of the lot and around a number of streets until plaintiff finally drove into the parking lot of a police station. Plaintiff's mother, who witnessed the incident, recalled that she saw defendant pull into the lot and park behind plaintiff; that plaintiff then "went into a panic" and drove off; and that defendant "went out of the lot after him." Defendant testified, denying that he had followed plaintiff into the lot or attempted to block him in, explaining that he was merely reaching for a camera to take a picture of plaintiff's car to show his daughter who had a restraining order against plaintiff, and disclaiming any intent to follow plaintiff out of the lot. Defendant also denied having made any prior threats against plaintiff.

The court entered oral findings at the conclusion of the hearing. The court stated that it did not believe defendant's presence at the lot was a "coincidence." It found that defendant had followed plaintiff into the lot and "frightened" him, and that his actions, while perhaps initially designed to "teas[e] him a bit" had "certainly alarmed" plaintiff. Accordingly, the court issued a final relief from abuse order, finding that defendant had placed plaintiff in fear of imminent

serious physical harm and that there was a danger of further abuse. The order required defendant to stay 100 feet away from plaintiff, and expired in 90 days.

On appeal, defendant contends that the evidence was insufficient to support a finding of abuse, and more specifically that it was insufficient to show that he had placed plaintiff in imminent fear of serious physical harm. Given the trial court's unique position to assess the credibility of the witnesses and weigh the evidence, we will affirm its findings if supported by credible evidence and its conclusions if reasonably supported by the findings. Benson v. Muscari, 172 Vt. 1, 6 (2001); Begins v. Begins, 168 Vt. 298, 301 (1998). The trial court here was thus fully entitled to accept plaintiff's claim that defendant intentionally blocked his vehicle and followed him out of the lot, and to disbelieve defendant's claim that the his presence there was purely coincidental and that he did not attempt to block plaintiff or follow him from the lot.

But the court did not adopt plaintiff's assertions in all material respects. Plaintiff's apprehension that defendant's actions represented a real threat of imminent serious physical harm was grounded on an alleged history of hostility between the parties. Yet the court made no finding that defendant had threatened plaintiff in the past. Nor did it find that, viewed in the context of such prior threats, plaintiff's fear of imminent serious physical harm was reasonable under the circumstances. See Coates v. Coates, 171 Vt. 519, 521 (2000) (mem.) (holding that evidence was insufficient to prove abuse where complainant never testified that she was placed in fear and the court made no findings relating "the parties' past history and plaintiff's subjective belief that she fears defendant"). Absent such findings, we are unable to conclude that the court's findings as a whole are sufficient to support the conclusion that plaintiff harbored a reasonable fear of imminent serious physical harm, which is broadly accepted as an essential element of an abuse-prevention order. See., e.g., Smith v. Hawthorne, 804 A.2d 1133, 1139 (Me. 2002) (recognizing that the victim's "fear needed to be reasonable for there to be 'abuse'"); Ginsberg v. Blacker, 852 N.E.2d 679, 683 (Mass. App. Ct. 2006) (holding that "the victim's fear of apprehension caused by the defendant's words or conduct must be more than subjective and unspecified; viewed objectively . . . the plaintiff's apprehension that force may be used [must] be reasonable") (quotations omitted); Cottongim v. Woods, 928 P.2d 361, 363 (Or. 1996) (finding abuse when a "reasonable person faced with such behavior would be placed in fear of imminent serious bodily harm"). Accordingly, we conclude that the findings are insufficient to demonstrate abuse, and that the judgment must, therefore, be reversed. See Begins, 168 Vt. at 301 (court's findings must reasonably support its conclusion).

Reversed.

BY THE COURT:

_____
Denise R. Johnson, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Brian L. Burgess, Associate Justice