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

**ENTRY ORDER**



SUPREME COURT DOCKET NO. 2009-031

MAY TERM, 2009

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| In re J.M. and A.M., Juveniles | } | APPEALED FROM: |
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| | } | Washington Family Court |
| | } | |
| | } | DOCKET NO. F61/62-4-08 Wnjv |
| | | Trial Judge: Thomas J. Devine |

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

Father appeals from a protective order of the Washington Family Court prohibiting him from coming within 300 feet of the minors J.M. and A.M. Father contends the court violated his statutory and constitutional rights by failing to hold an evidentiary hearing. We affirm.

This case began in April 2008 when the Department for Children and Families learned of father's extensive history of sexual abuse of young children and of his regular contact with mother's three young children: K.C., father's five-month old daughter, and two children by a different father, J.M., who was then three years old, and A.M., who was two. Following an evidentiary hearing in April 2008, the court issued a written decision, finding the children to be CHINS based upon a substantial risk of sexual abuse by father and medical neglect by mother. In its decision, the court noted father's 1991 conviction of lewd and lascivious conduct with a child who was five years old, his subsequent failure to complete a sex-offender treatment program and violations of probation, and DCF's administratively substantiated allegations of sexual abuse of four additional children in the following years. The court also found that, despite mother's awareness of this history, and more recent evidence that J.M. informed her maternal grandmother that father had touched her "privates," mother failed to appreciate the risk to the children and maintained regular contact with father, in some instances leaving the children unsupervised in his care. The children were thus found to be CHINS and placed in DCF custody. The two older children were placed in foster care, while K.C. remained with mother, and father's contact with K.C. was limited to supervised visits.

In December 2008, K.C.'s attorney moved to remove K.C. from mother's custody based on allegations that mother had allowed regular unauthorized contact with father. Following an evidentiary hearing, the court issued a written decision, finding the allegations to be credible and expressing concern about the parents' ongoing contact and the lack of concern for the child's safety. The court found that the best interests of the child did not support an order of removal, however, but rather a mutual non-contact order applicable to mother and father.

About a month later, in January 2009, the State moved for a protective order to restrict father's contact with J.M. and A.M. in anticipation of their return to mother's household from foster care. A hearing on the motion was held January 22, 2009. The court noted that the motion was brought pursuant to 33 V.S.A. § 5115(a), which became effective on January 1, 2009, and which authorizes "an order restraining or otherwise controlling the conduct of a person if the

court finds that the conduct is or may be detrimental or harmful to the child." The State indicated that it was relying on the earlier CHINS and modification proceedings and decisions in which the court had found that mother failed to appreciate the risk posed by father and was unwilling or unable to prevent him from having unsupervised contact with the children. Father was represented by counsel, who argued that the State had shown no risk of immediate harm. In oral findings, the court reviewed the history of the case and the prior proceedings, and found that, "based on [father's] recent clandestine contact with [mother,] which the court found [had] occurred despite [father's] adamant denials" and father's continued relationship with mother, the recent non-contact order was insufficient to guarantee the children's safety absent a protective order. Accordingly, the court issued a protective order requiring that father remain 300 feet away from J.M. and A.M. for a period of one year. This appeal followed.

Father principally contends that the protective-order statute, which requires notice to the person against whom the order is directed and "an opportunity to be heard," Id. § 5115(b), and due process require that he be afforded an evidentiary hearing. The record discloses, however, that father failed to request such a hearing, proffer evidence, or raise any other objection to the manner in which the hearing was conducted below. He merely argued that the State had failed to show an imminent risk of harm. We will not consider issues that were not raised at trial with sufficient clarity and specificity to apprise the trial court of the issue and afford the court the opportunity to address it. State v. Rideout, 2007 VT 59A, ¶ 19, 182 Vt. 113.

Father also asserts that the court lacked sufficiently current, relevant evidence on which to decide the motion. Father raised no objection to the court's reliance on the evidence and findings from the earlier CHINS and modification proceedings, the latter having occurred only one month earlier. That evidence, as the court found, showed that father had maintained regular and on-going "clandestine" contact with mother and the children over a long period of time, despite mother's awareness of the significant risk to the children of sexual assault, and despite a court order prohibiting unsupervised contact. This was sufficient to support the court's finding that a protective order was necessary to protect the children from the risk of sexual assault. Accordingly, we find no basis to overrule the judgment.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice