



Lauren Ronan v. Justin Gamache

FINDINGS AND ORDER

This is an action brought pursuant to the civil stalking statute.¹

Plaintiff seeks a protective order against Defendant. Plaintiff contends Defendant's actions constitute stalking pursuant to the statute.

Defendant opposes the petition. Defendant contends he did not "threaten" Plaintiff and any communication with Plaintiff is constitutionally protected speech.

Following a hearing, Plaintiff's complaint for protective relief is denied for the reasons set forth herein.

Facts

The following facts are found by a preponderance of evidence standard:²

Plaintiff is a law enforcement officer. Defendant is a member of the public. Plaintiff had work contact with Defendant in 2013. Plaintiff and Defendant are not household members.

Defendant began to contact Plaintiff in writing in 2013. Defendant sent approximately 625 emails over the following nine-year period that were either directly to or copied Plaintiff. There were periods of time during those nine years when no emails were sent. There were periods of time where emails were sent frequently. The email communications indicated, among other things: Defendant was going to sue Plaintiff; Defendant believed Plaintiff to be a liar; Defendant alleged Plaintiff engaged in inappropriate conduct; Defendant was going to place a lien on Plaintiff's property; and Defendant blamed Plaintiff for his father's death. Defendant's communications did not contain any threat of physical violence. In a "YouTube" recording embedded in a recent communication Defendant made several statements in what was described as a rambling manner, including using profanity towards Plaintiff. Email communication escalated over the past several months prior to the petitions filing.

On August 11, 2022, between the hour of 11pm and midnight Defendant called the residence where Plaintiff resides. Defendant did not speak to Plaintiff but spoke to a person who answered the phone. The conversation was quick. Defendant did not physically threaten Plaintiff in the conversation.

¹ Plaintiff applied for and was granted a temporary protective order against Defendant for stalking by threatening. Defendant was ordered to stay away from Plaintiff and not enter onto the Plaintiff's residence.

² The court does not and cannot rely on any hearsay statements or other speculative evidence presented at trial.

Defendant attempted to contact Plaintiff one other time by phone prior to August 11, 2022. Defendant did not speak with Plaintiff at that time.

Defendant sent a certified letter to Plaintiff at Plaintiff's residence regarding a civil lawsuit Defendant brought against Plaintiff.

In 2013 Plaintiff told Defendant the process for filing a complaint against her. That is the last time Plaintiff contacted Defendant. Plaintiff recently blocked Defendant's email. Defendant, to date, took no steps to otherwise contact Plaintiff through the blocked email.

Plaintiff is in fear for her physical safety.³ Plaintiff fears Defendant will come to her home. Plaintiff believes Defendant may appear at her family's home. Given the recent escalation of communication, Plaintiff wears a weapon while engaging in actions outside her home such as moving her lawn.

Analysis

In Vermont, if a defendant has stalked a plaintiff the court shall issue an order of protection. 12 V.S.A. § 5133(d).

Stalking in the civil stalking statute means "to engage purposefully in a course of conduct, [two or more acts over a period of time,] directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to: (A) fear for [their] safety or the safety of a family member; or (B) suffer substantial emotional distress" 12 V.S.A. § 5131(6); *Beatty v. Keough*, 2022 VT 41, ¶ 7; see also 12 V.S.A. § 5131(1)(A). A "[c]ourse of conduct" means "two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property." 12 V.S.A. § 5131(1)(A); *Tarbell v. Tarbell*, No. 2020-243, slip op. at 2 (Vt. Jan. 8, 2021)(unpublished mem). The definition applies to acts conducted "directly or indirectly" and "by any action, method, device, or means," but cannot include constitutionally protected activity. 12 V.S.A. § 5131(1)(A).

The determination of whether Defendant monitored, followed, or surveilled Plaintiff is straightforward on the facts of this case.

Following is an act of encountering another and proceeding after them for a distance. *Tarbell v. Tarbell*, No. 2020-243, slip op. at 2-3 (Vt. Jan. 8, 2021)(unpublished mem) (Three justice decision is not precedent but is instructive).

The facts do not support that Defendant followed Plaintiff.

Monitoring is the act of watching, or acting to "keep track of, or check usually for a special purpose." *Hinkson v. Stevens*, 2020 VT 69, ¶ 38 (quoting *Monitor*, Merriam-Webster.com Dictionary, <https://www.merriam-webster.com/dictionary/monitor> [<https://perma.cc/6623-C45C>]); *State v. Elliott*, 2010 ME 3, ¶ 36, 987 A.2d 513 ("[M]onitor ... means to watch, observe, or check esp. for a special

³ Plaintiff presented evidence about Defendant's actions towards others. That evidence cannot be considered as the statute requires any course of conduct to be directed at a specific person..." 12 V.S.A. § 5131(6). The actions towards others were not directed at Plaintiff and cannot be considered. Additionally, Plaintiff did not observe several of those actions. Plaintiff believes Defendant to have committed other actions such as causing pornographic material to be sent to her house, but at this time, those actions have not been proved by a preponderance of the evidence.

purpose” (quotation omitted)). This definition is consistent with several of the definitions in the American Heritage College Dictionary: “[t]o keep track of systematically with a view to collecting information,” “[t]o test or sample on a regular or ongoing basis,” or “[t]o keep close watch over; supervise.” *Monitor*, American Heritage College Dictionary 881 (3d. ed. 1993).

Monitoring, therefore, involves tracking or collecting some form of information about the person being monitored or their activities. *Hinkson v. Stevens*, 2020 VT 69, ¶ 39. (For example, calling a landline for the purpose of determining whether someone is home could constitute monitoring under 12 V.S.A. § 5131(1)(A). *Hinkson v. Stevens*, 2020 VT 69, ¶ 39 (Monitoring can be achieved “by any action, method, device, or means” quoting 12 V.S.A. § 5131(1)(A)).

The facts support Defendant wrote letters and emails to Plaintiff and called the Plaintiff twice in recent months. However, the facts do not support these specific acts were monitoring.⁴

Surveilling has a clear, plain meaning. *Scheffler v. Harrington*, 2020 VT 93, ¶ 10-11, (Honking a horn while unintentionally driving past plaintiff’s house, not knowing if plaintiff was there, is not surveilling). The plain meaning of surveillance requires, at a minimum, the intent to closely watch or carefully observe a person or place. Surveillance is close watching or careful observation, not the sending of a message. *Scheffler v. Harrington*, 2020 VT 93, ¶ 12.⁵

The facts do not support that Defendant surveilled Plaintiff.

While Defendant did not follow, monitor, or surveil Plaintiff, the determination of whether Defendant “threatened” Plaintiff as contemplated by the statute is a more complex analysis.

“[T]hreaten” in the civil stalking statute refers to only threats of physical harm. See, 12 V.S.A. § 5131(1) ; *Hinkson v. Stevens*, 2020 VT 69, ¶ 43. Threatening, “shall not be construed to require an express or overt threat,” but does not include constitutionally protected activity. 12 V.S.A. § 5131(1)(B); see also *State v. Noll*, 2018 VT 106, ¶ 39, 208 Vt. 474 (recognizing that “threatening speech need not be explicit or convey imminence”).⁶ A threat may consist of actions that subject the plaintiff to repeated and unwanted communication when that communication causes the plaintiff to fear for his or her safety. *State v. Ellis*, 2009 VT 74, ¶ 26 (noting that “obsessive behavior, without threats or attempted acts of violence, can cause a reasonable person to fear” for his or her safety).

⁴ That is not to say a person cannot monitor someone through written communication or telephone calls. The Legislature clearly intended to prohibit behaviors that involved keeping track of a plaintiff, a plaintiff’s activities, or a plaintiff’s whereabouts. *Hinkson v. Stevens*, 2020 VT 69, ¶ 40. However, monitoring does not include a broader field of disturbing, distressing or harassing contact, as the Legislature must provide this broader definition explicitly. *Hinkson v. Stevens*, 2020 VT 69, ¶ 40. See *In re K.A.*, 2016 VT 52, ¶ 9 (noting that we interpret statutes “on the basis of their ordinary meaning” and that we interpret “penal statutes strictly” (quotation omitted)).

⁵ The Black’s Law Dictionary defines surveillance as “[c]lose observation or listening of a person or place in the hope of gathering evidence.” *Surveillance*, Black’s Law Dictionary (11th ed. 2019). Similarly, Merriam-Webster defines surveillance as “close watch kept over someone or something (as by a detective).” *Surveillance*, Merriam-Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/surveillance> [<https://perma.cc/MR92-8NLG>]. Cambridge Dictionary’s definition of surveillance is also very similar: “the act of watching a person or place.” *Surveillance*, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/surveillance?q=surveillance>. [<https://perma.cc/KK5E-SUWS>].

⁶ A “threat” is “ ‘a communicated intent to inflict harm on person or property.’ ” *Hinkson v. Stevens*, 2020 VT 69, ¶ 45. (quoting *State v. Schenk*, 2018 VT 45, ¶ 11 (quoting *State v. Cole*, 150 Vt. 453, 456 (1988))).

Physically throwing an object at someone followed by repeatedly contacting a person with harassing messages; changing a phone number to avoid being blocked from communicating; disparaging a person in front of others; and contacting an employer in an attempt to affect a person's job may equate to escalating, erratic behavior that may cause a person to fear for their safety. *Strecker v. Strecker*, No. 2020-096 (Vt. Sept. 4, 2020)(unpublished mem.).

However, the civil stalking statute must be construed "narrowly" to ensure a fair warning of the legal consequences for committing certain defined acts. *Beatty v. Keough*, 2022 VT 41, ¶ 8.

There is no evidence that Defendant communicated an intent to inflict harm on Plaintiff, her family or her property. *Hinkson v. Stevens*, 2020 VT 69, ¶ 45. Defendant made threats of other actions but not actions that threaten Plaintiff with physical violence. Threatening, "shall not be construed to require an express or overt threat," but does not include constitutionally protected activity. 12 V.S.A. § 5131(1)(B); see also *State v. Noll*, 2018 VT 106, ¶ 39 (citations omitted). The speech must rise to the level of a true threat on an objective basis, "whether an ordinary, reasonable person familiar with the context of the communication would interpret it as a threat of injury." *State v. Noll*, 2018 VT 106, ¶ 37, 208 Vt. 474. A threat requires an " 'actual intent to put another in fear of harm or to convey a message of actual intent to harm a third party.' " *State v. Johnstone*, 2013 VT 57, ¶ 17 (quoting *State v. Miles*, 2011 VT 6, ¶ 7-8, (mem.)). Defendant's actions, on the facts here, lack the actual intent to put another in fear of physical violence required to meet the statutory threshold.

An objective threat may occur "in the context of defendant's overall course of conduct as well as the specific context," that certain actions "would cause a reasonable person to fear unlawful violence." *State v. Noll*, 2018 VT 106, ¶ 40. There is no question Defendant's written communications escalated in the months prior to the filing of this complaint. However, cases resulting in an issuance of a protective order for threatening based on obsessive behavior include some fact of in person contact, or attempts at in person contact, to support a context of a threat to physical safety.⁷ The lack of attempts at in person contact combine with the lack of threat of physical violence to prevent the required findings under the statute.

Defendant's actions must meet the definition provided in the civil stalking statute to support the issuance of a protective order. Based on the statute, and Vermont Supreme Court precedent it does not.⁸

Plaintiff's petition must be denied at this time.⁹

⁷ For example, in one instance a defendant, had been told not to contact a plaintiff, contacted the plaintiff referencing the plaintiff's location; arrived at the plaintiff's workplace, leaving and coming back three separate times. *Garrett v. Makukhov*, No. 2018-134 (Vt. Feb. 1, 2019)(unpublished mem.). In another instance, a defendant who threw a shoe at the plaintiff during one in person interaction later repeatedly contacted the plaintiff with harassing messages; changed a phone number to avoid being blocked from communicating; disparaged the plaintiff in front of others; and contacted an employer in an attempt to affect a person's job. *Strecker v. Strecker*, No. 2020-096 (Vt. Sept. 4, 2020)(unpublished mem.). Those case facts provide escalating, erratic behaviors including in person contact and attempts at in person contact. Facts of that nature are devoid from this record.

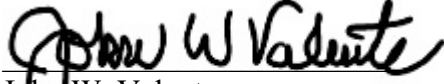
⁸ The court is cognizant that the Plaintiff here is a member of law enforcement whose initial contact with Defendant was through her employment and these subsequent events relate to that initial contact. However, the legislature has made no provision for additional protections in the civil stalking statute for the protection of law enforcement officers, emergency responders, or other public servants. The court cannot apply more stringent standards to protect those professionals when the legislature has not.

⁹ The denial of this petition does not prevent the Plaintiff from filing a new petition should Defendant engage in actions subsequent to these actions that equate to stalking as defined by the statute.

Order

Plaintiff's petition is denied. A judgment order shall issue consistent with this opinion.

Electronically Signed 9/7/2022 8:37 AM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "John W. Valente". The signature is written in a cursive, flowing style.

John W. Valente
Superior Court Judge