

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2001-477

MAY TERM, 2002

Suzanne Brooks

v.

William Brooks

APPEALED FROM:

Windsor Family Court

DOCKET NO. 248-9-01 Wrfa

Trial Judge: Michael C. Pratt

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

Mother appeals from a family court decision denying her request for a final relief from abuse order. She contends the court erred in: (1) construing the relief-from-abuse statute to require a pattern of malicious behavior in order to demonstrate emotional maltreatment; and (2) concluding that the evidence was insufficient to demonstrate abuse. We affirm.

This is the second appeal from a relief-from-abuse order involving the parties. In Brooks v. Brooks, No. 2001-102 (Sep. 26, 2001) (mem.), we reviewed the underlying history, noting that the parties had married in 1998, had two young children, and had separated in 2000, an event which resulted in father's becoming depressed and exhibiting erratic behavior. In January 2000, wife obtained a final abuse-from-relief order based on an incident in December 1999, in which father went to mother's residence and slashed or punctured the tires of a car owned by a friend of mother's. We affirmed the order as it applied to mother, holding that the evidence was sufficient to support a finding that father had put mother in fear of imminent physical harm. We reversed the order as it applied to the children, however, concluding that the evidence failed to support the finding that father had entered mother's premises, which formed the basis, in turn, of the finding that father's conduct had caused the children emotional injury as defined under 33 V.S.A. § 4912(7) ("Emotional maltreatment" means a pattern of malicious behavior which results in impaired psychological growth and development."). We thus remanded to the trial court for further consideration of whether the evidence supported a finding that father's behavior constituted abuse under the statute. That remand is apparently still pending.

Mother applied for a second relief-from-abuse order on September 27, 2001, seeking to limit father's contact with the children. The application was occasioned by an incident the prior evening in which father, after dropping off the children at mother's residence, became upset that mother's friend was caring for the children while mother attended a school conference. Father forcibly removed the children, contrary to the custody and visitation order. Mother was informed of the incident, and sought police intervention to retrieve the children. The court issued a temporary relief-from-abuse order, and scheduled a hearing for October.

Mother adduced substantial evidence at the hearing concerning the emotional distress that the incident caused the children. Based on that evidence, the court found that father's actions created a substantial risk of psychological harm to the children. The court further found, however, that the evidence as a whole was insufficient to demonstrate a pattern of malicious behavior constituting emotional maltreatment, and therefore denied the final relief from abuse order. This appeal followed.

Mother first contends the court erred in requiring a pattern of misconduct to establish emotional abuse. During the course of the hearing, the court observed that the statute defined an abused child as one whose "psychological growth and development or welfare is harmed or is at substantial risk of harm," 33 V.S.A. § 4912(2), that "harm" and "risk of harm" include "emotional maltreatment," id. §§ 4912(3)(A) & (4), and that "emotional maltreatment" is defined as "a pattern of malicious behavior which results in impaired psychological growth and development," id. at § 4912(7). Counsel for both mother and father expressly agreed that mother's burden was to demonstrate a pattern of malicious behavior resulting in impaired psychological growth and development. Therefore, mother has not preserved her claim that the court erred in requiring a pattern of malicious behavior to establish emotional maltreatment. See *State v. Ben-Mont Corp.*, 163 Vt. 53, 61 (1994) ("To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it.").

Mother further contends the court erred in finding that the evidence was insufficient to establish a pattern of malicious behavior resulting in impaired psychological growth and development. We review the trial court's findings in the light most favorable to the judgment, disregarding the effect of modifying evidence, and will not set them aside unless clearly erroneous. *Coates v. Coates*, 171 Vt. 519, 520 (2000) (mem.). We will uphold the court's findings if supported by credible evidence, and its conclusions if reasonably supported by its findings. Id. The record evidence here supports the court's finding that although the September 27 incident caused the children emotional distress, there was insufficient evidence that the children had witnessed or otherwise been detrimentally affected by prior incidents in which father had violated the pre-existing relief from abuse order. There was also substantial evidence that the children remained emotionally very attached to father. Accordingly, we cannot conclude that the court's findings were clearly erroneous.

Affirmed.

BY THE COURT:

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James L. Morse, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice