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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2007-346 & 2007-404

MAY TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Franklin Circuit
	}	
Thomas M. Gleason, Jr.	}	DOCKET NOS. 408-3-07 FrCr & 742-6-07 Frcr
		Trial Judge: Ben W. Joseph, Michael S. Kupersmith

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

Defendant appeals from separate judgments of conviction for violating a final relief-from-abuse order. He contends that the State's failure to serve him with the affidavit and complaint underlying the temporary relief-from-abuse order divested the court of jurisdiction to issue the final order, and deprived him of due process. We affirm.

The material facts may be summarized as follows. Defendant was incarcerated in August 2006 and released on January 9, 2007. The following day, the complainant, defendant's wife, applied for a relief-from-abuse order against defendant, alleging in her supporting affidavits that defendant had physically abused her in the past and feared that he would do so again. The court issued a temporary order that day, prohibiting defendant from coming within 500 feet of the complainant or her residence, place of employment, or vehicle. The order notified defendant that a hearing had been set for January 16, 2007. A copy of the order was returned to the superior court with a note indicating "unable to serve," presumably owing to defendant's unstable housing situation after his release from prison, when he lived for a period in a homeless shelter and substance abuse treatment facility.

On January 16, 2007, the date scheduled for the hearing, the court issued an "extended" temporary order incorporating the same terms as the temporary order and setting a new hearing date for January 22, 2007. A law enforcement officer attempted personally to serve the order on defendant in his room in the treatment facility, but defendant locked himself in the bathroom. The officer read the order to defendant through the door, and left it in his room. Defendant failed to appear on the scheduled hearing date, however, and a final order was issued.

Service of the final order on defendant was apparently not effectuated until March 26, 2007, when the complainant called the police to report that defendant was refusing to leave her home. The investigating officer obtained a copy of the final order, read it to defendant, and gave him the order, although defendant refused to sign the return of service and refused to leave despite numerous requests. Accordingly, he was placed under arrest and charged with violation of the order. Following a one-day trial in August 2007, a jury returned a verdict of guilty, and defendant was later sentenced to ten to twelve months' imprisonment. The State filed a separate information, charging defendant with additional violations of the final order in June 2007. Defendant entered a conditional plea of guilty and received concurrent sentences of zero to six months' imprisonment on each count. Defendant appealed from both judgments, which we consolidated for review.

Defendant contends that service of the extended temporary order was invalid, because it did not include a copy of the complaint and supporting affidavits. Defendant further asserts that this somehow divested the court of jurisdiction to issue a final order. Defendant's premise, however, is mistaken. The operative statute, 15 V.S.A. § 1105(a), provides that "[a] complaint or ex parte temporary order or final order issued under this chapter shall be served in accordance with the rules of civil procedure and may be served by a law enforcement officer." Defendant takes from this language that the officer was required personally to serve not only the order but also the complaint, under V.R.C.P. 4(d), which provides that ,in order to effectuate civil process, "service of the summons and complaint shall be served together." § 1105, however, plainly refers to service of the "complaint or the ex parte temporary order," the use of the disjunctive suggesting that service of the order alone is sufficient. 15 V.S.A. § 1105(a). This conclusion is reinforced by the balance of the statute, which goes on to state that "[a]buse orders shall be served at the earliest possible time," that "[o]rders shall be served in a manner calculated to insure the safety of the plaintiff," and that the person making service shall file a return "stating the date, time and place at which the order was delivered personally to the defendant." Id.

As the State points out, moreover, service of the complaint in a civil action is essential to afford the defendant the ability to comply with the requirement of filing an answer within twenty days of service. Under the relief-from-abuse statute, no such answer is required; the complaint and affidavit serve merely to establish a basis for an emergency or temporary order, conditional upon a full, de novo, contested hearing that occurs within ten days of its issuance. Id. § 1104(b). Indeed, in compliance with the relief-from-abuse statute, the temporary order here clearly informed defendant of the particular court issuing the order, the identity of the parties, and the date, time, and place of the scheduled final hearing. Accordingly, we find no impropriety in the service of process, nor any infirmity in the court's exercise of jurisdiction.

Defendant also claims that failure to serve a copy of the complaint and affidavits violated his due process rights, because he was not thereby informed of the nature of the allegations against him. This claim was waived, however, by defendant's failure to attend the final hearing and raise the issue there, despite having received notice of the hearing and an opportunity to assert any alleged procedural defects. As we held in State v. Mott, 166 Vt. 188, 191-92 (1997), a defendant may not collaterally attack the validity of an underlying abuse-prevention order except in very limited circumstances, where the defendant claims that the court in the underlying action lacked jurisdiction over the defendant or subject matter jurisdiction. We allowed such an attack

in Mott only because the defendant in that case claimed that he had not received notice of the final hearing while he was incarcerated. Id. Defendant can make no such claim here. Accordingly, we find no basis to disturb the judgments.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Brian L. Burgess, Associate Justice