

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-199

OCTOBER TERM, 2017

Carol Ann Patenaude	}	APPEALED FROM:
	}	
v.	}	Superior Court, Orleans Unit,
	}	Family Division
	}	
Eugene Ladd	}	DOCKET NO. 61-5-17 Osfa

Trial Judge: Robert R. Bent

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

Defendant appeals a final relief-from-abuse (RFA) order entered against him. We affirm.

On May 23, 2017, plaintiff filed a request for an RFA order. In her affidavit accompanying her complaint, she stated that the most recent incident occurred on May 22, the day before, when defendant called out to her by name as she was crossing Main Street in Newport, Vermont, which frightened her because of past incidents, including an incident involving alleged unconsented sexual acts by defendant towards her. Plaintiff further explained that their relationship had ended in the beginning of March of that year, when she told defendant's parole officer what he was doing to her and defendant was returned to prison for living in an unauthorized residence. She stated that defendant had been released again and was being monitored by GPS but was following her to work and sending her notes.

The same day the complaint was filed, the superior court issued a temporary RFA order pending a hearing set for May 30. The temporary order form indicated that defendant had stalked plaintiff and that there was an immediate danger of further abuse. The order required defendant to refrain from abusing or stalking plaintiff, contacting her, or coming within 300 feet of her residence, place of employment, or motor vehicle.

Following the hearing, at which plaintiff and defendant testified, the court issued a final RFA order the same day. The order form indicated that defendant had stalked plaintiff and either sexually assaulted her or engaged in lewd and lascivious conduct. The order further indicated that defendant was incarcerated and had been convicted of one of the crimes specified in 15 V.S.A. § 1103(c)(1)(B). The order required defendant to refrain from abusing, threatening, or contacting plaintiff or coming within 300 feet of her residence, place of employment, or motor vehicle.

The court also issued separate written findings, stating that: (1) in addition to the testimony taken at the May 30 hearing, the court had taken evidence from plaintiff and defendant at a March 21, 2017 hearing following an earlier complaint; (2) at the time, the court credited plaintiff's testimony that she had been sexually assaulted or subjected to lewd conduct by defendant but did not issue a final RFA order because it did not appear the parties were likely to have future contact

with each other due to defendant's incarceration and the ending of their relationship; (3) since the March hearing, defendant had continued communicating with plaintiff from prison and had recently spoken to her on Main Street in Newport, suggesting that they had some ongoing relationship; (4) at the May 30 hearing, the court credited plaintiff's "forthright and consistent" testimony regarding defendant's misconduct toward her, despite his denials; (5) plaintiff remained fearful of defendant because of defendant's misconduct stemming from incidents in January and February of that year and his ongoing efforts to contact her; (6) defendant had stalked plaintiff through letters and other forms of communication; and (7) there is a likelihood of future misconduct, notwithstanding defendant's conditions of release and active GPS monitoring.

On appeal, defendant argues that plaintiff failed to carry her burden of proof regarding the alleged abuse or her fear of imminent serious physical harm and that the court's written findings are not supported by credible evidence and thus cannot support the RFA order.

"In matters of personal relations, such as abuse prevention, the family court is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing." Raynes v. Rogers, 2008 VT 52, ¶ 9, 183 Vt. 513. "As such, we review the family court's decision to grant or deny a protective order only for an abuse of discretion, upholding its findings if supported by the evidence and its conclusions if supported by the findings." Id.

In this case, defendant did not order a transcript of the May 30 hearing. Because informed appellate review of his argument challenging the court's findings is impossible, defendant has waived his right to raise the argument. See V.R.A.P. 10(b)(1) (providing that appellant must order "all parts of the proceedings relevant to the issues raised by the appellant" and that failure to order transcript will result in waiver of "the right to raise any issue for which a transcript is necessary for informed appellate review"); Airi v. Nagra, 2017 VT 42, ¶ 5 (stating that, without transcript, evidence could not be reviewed to determine if it supported trial court's findings and, as such, findings are assumed to be supported by evidence). However, the findings that were made by the trial court support a finding of abuse and a danger of further abuse. Accordingly, we uphold the RFA order.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice