Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-017

MAY TERM, 2019

Jodi Adams v. John D. Nichols*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 538-11-18 Cnfa
		Trial Judge: Thomas Carlson

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

Defendant appeals pro se from the trial court's order granting plaintiff's request for a relief-from-abuse (RFA) order against him. He raises numerous arguments. We reverse and remand for additional findings.

The record indicates the following.[*] Plaintiff and defendant were in a long-term, up-and-down, relationship. Plaintiff ended the relationship in 2018. In November 2018, plaintiff sought an RFA order against defendant, alleging that he was stalking and harassing her. Both parties testified at the final hearing; defendant was represented by counsel. At the hearing, plaintiff described her prior attempts to end her relationship with defendant, explaining that she had asked defendant to leave her alone and give her time and he did not do so. Plaintiff stated that defendant's behavior in the past was "relentless"; he would show up at her home, call, text, and email, pressuring her to resume the relationship until she got to the point where it was "just easier to not fight it."

With respect to the late 2018 breakup, plaintiff testified that she told defendant via text, email, and in person that she did not want to have anything more to do with him. She blocked defendant's number on her phone. She emailed him in early October 2018 informing him that she would file for an RFA order if he continued to contact her or her children. Around this time, plaintiff learned that defendant had asked her friend for copies of plaintiff's Facebook posts. The friend told plaintiff that defendant said that he "really want[ed] to punish" plaintiff for ending the relationship. The friend expressed concern to plaintiff about defendant's stability and irrational behavior.

[*] Defendant included materials in his printed case that were not submitted into evidence below. These materials are outside the record and we do not consider them. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) ("[O]ur review is confined to the record and evidence adduced at trial. On appeal, we cannot consider facts not in the record.").

In November 2018, defendant emailed plaintiff a link to an audiobook; she replied, "Do not communicate with me!" Defendant responded, "please don't hurt me anymore." Plaintiff then reiterated her request that he leave her alone. Defendant subsequently sent plaintiff a card, apparently having someone else address the envelope to disguise his handwriting so that plaintiff would open it. The letter was admitted into evidence without objection. In the letter, defendant stated that he was confused by the distance plaintiff was keeping from him and that he really wanted to be in touch with her. Defendant again asked plaintiff not to hurt him anymore. Finally, plaintiff introduced a lengthy letter she received from defendant's former girlfriend in November 2018. The letter essentially begged plaintiff to give defendant another chance. Plaintiff testified to her belief that the letter was orchestrated through defendant.

Plaintiff was asked if she had changed the way she went about her daily life in response to defendant's actions. She replied that she had alerted her work that defendant was not allowed to come to her office. She also changed her work schedule "a little bit" to come in earlier and to sometimes leave earlier. She stated that she tried to vary her schedule every day. Plaintiff testified that she recently got a dog because she was fearful that defendant was around. She changed her church schedule because defendant had involved himself more with her church. She avoided church if she was told that defendant would be there. Plaintiff also changed her grocery shopping schedule to coincide with times that defendant was out of town. As defendant was no longer working out of town during the week, however, she stated that she was much more fearful. Plaintiff expressed additional concern because she parked in a lot at home and work and had to walk alone to both locations. Plaintiff stated that she made it crystal clear to defendant in August 2018 that the relationship was over and that she had tolerated his behavior for a long time before seeking the RFA.

Defendant also testified. He stated that plaintiff had a pattern of "shut[ting] down" if there were relationship issues and that he would try to "open the lines of communication" and they would then "make sense of it all." Defendant said that plaintiff indicated to him in August 2018 that she was frustrated in the relationship. He said they met to discuss the relationship in early September, and he understood that "[t]here was space needed" and that communication would be limited. Apparently, there was some communication in the weeks that followed. At the end of September, defendant called plaintiff. He stated that he was "very confused" and "completely blindsided" by plaintiff's "venom[ous]" reaction to his call, which he considered an "abrupt change." The following day, defendant texted plaintiff and sent her an email. He also texted her son. Plaintiff did not reply to the email. He also asked a friend to tell him what plaintiff posted on Facebook so he would know "what's going through her mind . . . because [he] was totally confused" and "lost." He described talking with this friend about plaintiff and indicated that while he did not remember talking about punishing plaintiff, he would have been referring to God punishing her for "hurting" him and "deserting" when he needed her, rather than defendant personally hurting her in any way. Defendant acknowledged receiving plaintiff's October 2018 email telling him not to contact her or her children. He admitted to nonetheless sending her a link to an audio book and later a card. He did not offer any testimony about the letter that plaintiff received from his ex-girlfriend. Defendant also described seeing two missed calls from plaintiff at the end of October. Plaintiff responded that a new phone system had been installed at her work and that the calls were inadvertent.

The court granted the RFA, acknowledging that this was a close case. On a preprinted form, it found that defendant stalked plaintiff and that there was a danger of further abuse. See 15 V.S.A. § 1101(1)(D) (providing that "stalking," as defined in 12 V.S.A. § 5131(6), constitutes "abuse" for purposes of RFA order). As relevant here, "stalk" means:

> to engage purposefully in a course of conduct directed at a specific person that the person engaging in the conduct knows or should know would cause a reasonable person to:
>
> . . .
>
> (B) suffer substantial emotional distress as evidenced by:
>
> . . .
>
> (ii) significant modifications in the person's actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person's life, changes to the person's employment or work schedule, or the loss of a job or time from work.

12 V.S.A. § 5131(6)(B)(ii).

The court did not make specific findings addressing all of the elements of stalking, although it made clear that it was focusing on the provisions above as opposed to any concerns about physical abuse or threat of physical abuse. Cf. id. § 5131(6)(A), (B)(i) (addressing other conduct that can constitute stalking). In its findings on the record, the court expressed its concern about the strength of defendant's feelings and his ongoing wish to get back together despite plaintiff's clear indication that she wanted no contact. It explained that plaintiff made clear to defendant as of early October 2018 that their relationship was over and that she did not want any further communication. It found that defendant then engaged in a course of conduct over the next several months trying to build a bridge back to plaintiff, including through two letters to plaintiff, one directly from defendant and the other from his friend, apparently at defendant's instigation. Defendant also sent plaintiff an email, forwarding her a link to an audiobook. The court found that this, by itself, could be considered a harmless communication, but under the circumstances, defendant was clearly trying to reach out to plaintiff despite her wish for no contact. The court issued an order prohibiting defendant from communicating with plaintiff for one year and prohibiting him from coming within 100 feet of plaintiff or her work. This appeal followed.

We review the court's decision "only for an abuse of discretion, upholding its findings if supported by the evidence and its conclusions if supported by the findings." Raynes v. Rodgers, 2008 VT 52, ¶ 9, 183 Vt. 513. We leave it to the trial court "to assess the credibility of witnesses and weigh the strength of evidence at hearing." Id. While we defer to the trial court, we also recognize that "[t]he trial court has a fundamental duty to make all findings necessary to support its conclusions, resolve the issues before it, and provide an adequate basis for appellate review." Sec'y, Vt. Agency of Nat. Res. v. Irish, 169 Vt. 407, 419 (1999). As set forth below, we conclude that the court failed to make adequate findings here.

Defendant raises two procedural arguments that we reject at the outset. He asserts, for the first time on appeal, that the court should not have admitted the two letters that plaintiff received. Defendant waived these arguments by failing to raise them below. See Human Rights Comm'n v. LaBrie, Inc., 164 Vt. 237, 252 (1995) (explaining that where specific objection not raised before trial court, Supreme Court will not address issue on appeal). We similarly reject defendant's contention that he was denied the opportunity to fully present his case. The record does not support this assertion.

We thus turn to the crux of this appeal: whether the evidence and the court's findings support its conclusion that defendant stalked plaintiff. Defendant complains that the court did not make specific findings regarding the definition of stalking. He contends that there was insufficient evidence to establish a course of conduct that would cause a reasonable person "substantial" emotional distress and that there was no evidence of any need for "significant" modifications to plaintiff's actions or routines. Defendant further argues that the court should have given more weight to the fact that he had two missed phone calls from plaintiff in October 2018 and that it otherwise misconstrued the evidence. Defendant also takes issue with other testimony presented by plaintiff, asserting that she made unsubstantiated claims. Additionally, defendant maintains that he should not be blamed for a letter that his ex-girlfriend wrote to plaintiff.

First, we reject defendant's assertion that the evidence, as a matter of law, could not support the conclusion that he stalked plaintiff. There is sufficient evidence from which the court could reach the ultimate conclusion that it did. In so concluding, we emphasize, as set forth above, that it is the role of the trial court to weigh the evidence and determine the credibility of witnesses. See Raynes, 2008 VT 52, ¶ 9 ("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."). Defendant's arguments that the court "misconstrued" the evidence, did not give enough weight to certain evidence, or erred in crediting plaintiff's testimony are attacks on the trial court's role as factfinder. The court could credit plaintiff's testimony without requiring additional "substantiation" as defendant asserts, and its failure to adopt defendant's interpretation of the evidence does not show that the evidence was "misconstrued." See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion). The court could also reasonably find that the letter to plaintiff from defendant's ex-girlfriend had apparently been sent at defendant's instigation. The nine-page letter to plaintiff from defendant's former girlfriend reflects what appears to be an in-depth knowledge about the past and present relationship situation between plaintiff and defendant.

Nonetheless, while we reject defendant's challenges to the court's assessment of the weight of the evidence, we conclude that the court failed to make critical findings to support its decision, leaving this Court unable to discern precisely what it decided and why. Although the trial court found that defendant engaged in a "course of conduct," it did not explicitly find that defendant knew or should know that his conduct would cause a reasonable person to "suffer substantial emotional distress" as evidenced by "significant modifications in the person's actions or routines." 12 V.S.A. § 5131(6)(B)(ii). The court's findings are inadequate to allow us to discern the basis of its conclusion. We must therefore reverse and remand its decision for specific findings on the elements of stalking set forth above. See Irish, 169 Vt. at 419 (reversing and remanding where

trial court's findings were inadequate). If the court cannot make these findings, the RFA complaint must be dismissed.

Reversed and remanded for additional findings.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice