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. 2020-100

SEPTEMBER TERM, 2020

Sarah A. Spengler v. SOVEREIGN-NAAN KEENAN-PHILLIP OF-ALLODIUM (Keenan Kurt)*	}	APPEALED FROM:
	}	Superior Court, Chittenden Unit, Civil Division
	}	DOCKET NO. 30-2-20 Cnsa
		Trial Judge: Gregory J. Glennon, Specially Assigned

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

Defendant appeals pro se from the court's issuance of a civil anti-stalking order under 12 V.S.A. § 5133. We remand for additional findings.

Plaintiff sought an anti-stalking order against defendant in February 2020. The court held a contested hearing at which plaintiff, her father, and defendant testified. Plaintiff also submitted, without objection, her affidavit and the exhibits she attached to her request for relief, including emails that defendant sent to her and a transcription of some of the lyrics in a twenty-two minute song that defendant wrote and sent to plaintiff. Plaintiff's evidence indicated the following. Defendant is plaintiff's first cousin by marriage. Plaintiff did not know defendant well. In 2011, plaintiff contemplated moving to Colorado after graduating from nursing school. She asked defendant, who lived in Colorado, if she could stay with him while she looked for a job. Plaintiff did not end up traveling to Colorado. After she cancelled her trip, defendant emailed and called her, expressing a romantic interest in her. Within two months, defendant moved to Vermont. Plaintiff and her family members asked defendant to cease his behavior, with apparent success.

In early 2020, however, plaintiff received two emails from defendant. She did not respond to either message. In the first email, defendant expressed his continued romantic interest in plaintiff. He told her that he was having trouble moving on and accepting her "rejection" of him because she did not communicate with him and because "no one compares." He wanted to communicate with her to resolve the "conflict." Defendant indicated his belief that plaintiff was "attracted to join [him]" in Colorado and said that it took him ten years to "get all the way back into alignment." He stated that he had moved to Vermont "to follow up on the potential [plaintiff] presented."

Several days later, defendant sent another email to plaintiff that included a link to a twenty-two-minute song called "Heart Poured Out" that he had written to process his feelings and heal from his "trauma." As transcribed by plaintiff's father, the song reflected defendant's intense

ongoing romantic interest in plaintiff, and he questioned if plaintiff felt the same way. Defendant wrote, "I know her I know me resonate explicably/is it true she feels this way too"? Defendant also referenced plaintiff's fiancé several times ("still she is laying with another man") and stated that "8 long years pass all I feel is for her." He wrote several times: "Clear when she is near we fall in love we marry we embrace." Defendant recounted relocating to Vermont to pursue plaintiff: "Driving 4000 miles with no rest, Sanity eludes heart and mind the head inside/Almost lost best friend/Psychotic mantra demon within/She must be sharing this journey though/Alone in homeland though home no more/Check my love for response." He repeats the words "psychotic mantra" several times: "Weird music/Psychotic mantra? I hear a repeating pattern psychotic mantra." He also wrote: "When life fades I hope the hope the truth of it remains/For one life lost is a worthy cause for a moment of bliss in which all is lost I take the storm independent as one what more can be lost to death do I go/what waits to remain is merely conjecturing/Whether alone or not or conjecturing we have found our peace. . . ." He reiterated: "Life lost for a worthy cause is a worthy moment" and "one life lost is worth it for a moment of bliss." Plaintiff testified that her father listened to the song so that she would not have to, and she was aware that it contained "a lot of increasingly disturbing things in it."

Plaintiff stated that defendant appeared obsessed with her and refused to leave her alone. She felt threatened by his emails and scared for her safety, particularly given defendant's mental instability and his increased desire to be with her. She did not think defendant's behavior would stop and she believed defendant posed a threat of physical harm to her. Plaintiff and her father had asked defendant to stop contacting her to no avail. Plaintiff testified that defendant's behavior caused her great emotional distress and she feared his behavior would continue to escalate.

Plaintiff's father testified that defendant had sent plaintiff bizarre and unsettling notes following her cancelled trip to Colorado, causing plaintiff fear. Plaintiff had never expressed any romantic interest in defendant and his behavior was unsettling because plaintiff did not know what would happen next.

Defendant testified that he believed plaintiff sought to move to Colorado because she was interested in him romantically. Defendant thought that plaintiff was sending him mixed messages. When she did not respond to his attempts to contact her, he became unbalanced. Defendant testified that in his emails, he attempted to convey the truth from his perspective. He stated that he was trying to figure out why plaintiff cut off all communication with him. Defendant indicated that there was nothing wrong with being in love with someone. He acknowledged that he knew now that plaintiff was scared of him, though he contended that she had no reason to be. He stated that "if someone loving you is that scary, I—I guess I can understand that she is afraid." Defendant submitted several exhibits as well. In one of the exhibits, he stated that he suffered "trauma" from plaintiff's decision "not to move in with him." He believed that plaintiff's reaction to his recent emails reflected her "emotional involvement and attachment." He also stated that he sent his song to plaintiff privately "[a]s an optional source of further revelation, if she was interested," and he complained that lines from his song had been cherry-picked and misconstrued, including the reference to death.

The court made findings on the record at the close of the hearing. It credited plaintiff's testimony that she felt threatened by, at minimum, the two recent emails that defendant sent to her.

According to the court, defendant acknowledged that it was not unreasonable to feel threatened under the circumstances. The court found that the emails constituted a course of conduct and that defendant knew or should have known his behavior would cause a reasonable person to fear for her safety. The court thus issued a final order against stalking, directing defendant to stay 100 feet away from plaintiff and not to communicate with her for one year. Defendant moved for reconsideration, which the court denied. It reiterated its observation that defendant had acknowledged that it was reasonable for plaintiff to feel threatened by his emails. It further found that in addition to threats, the evidence also showed that defendant followed, monitored, or surveilled plaintiff. Defendant appealed.

Defendant argues on appeal that there is insufficient evidence to support the court's order. He describes why he believes his communications with plaintiff should be viewed as nonthreatening, including that the second email contained a link to a song he wrote rather than the lyrics themselves. He contends that plaintiff was not frightened of him. Defendant also asserts that the court repeatedly mischaracterized his testimony and that it ignored his evidence. He further asserts that he did not follow, monitor, or surveil plaintiff.

On review, we will uphold the trial court's findings if supported by the evidence; we review its legal conclusions de novo. McCool v. Macura, 2019 VT 85, ¶ 6. "As the trier of fact, it [is] the province of the trial court to determine the credibility of the witnesses and weigh the persuasiveness of the evidence." Cabot v. Cabot, 166 Vt. 485, 497 (1997).

"Stalking" is defined in relevant part as "engag[ing] 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 . . . fear for [their] safety." 12 V.S.A. § 5131(6)(A). A "course 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." Id. § 5131(1)(A). The term "threaten shall not be construed to require an express or overt threat." Id. § 5131(1)(B).

We recently construed the term "threaten" in Hinkson v. Stevens, finding it limited to "a communicated intent to inflict physical harm on another person." 2020 VT 69, ¶ 46; see also id. ¶ 44 (holding that "civil stalking statute implicitly prohibits only true threats, because it excludes constitutionally protected activity from the definition of 'course of conduct' " (quoting 12 V.S.A. § 5131(1)(A))). We recognized, as set forth above, that no "express or overt threat" was required to satisfy the statute. Id. ¶ 41.

In Hinkson, the plaintiff obtained an anti-stalking order against the defendant after the defendant repeatedly called her cellphone from a number with no caller ID, sent three shipments of books about rape to her home addressed to her husband, and watched her in a coffee shop for an unspecified period of time. We found this evidence insufficient to show a "course of conduct" as required by statute. Id. ¶ 51. More specifically, we concluded that the plaintiff failed to offer any theory why the repeated calls were threatening as opposed to harassing. Id. ¶ 41. We similarly concluded that the shipment of books and emails sent by the defendant could not be construed as threatening physical harm. Id. ¶ 42, 50. That left only the incident in the coffee shop, which standing alone was insufficient to establish a course of conduct. Id. ¶ 51.

In reaching our conclusion, we emphasized that our decision was "based on our consideration of the acts in context" and that there was no rule that certain types of conduct, including emails, "could never be part of a course of conduct." Id. ¶ 52. We expressly recognized that one party's fixation on another "could be shown to imply more serious threats of harm." Id. (citing State v. Noll, 2018 VT 106, ¶ 41, 208 Vt. 474 ("The jury could reasonably conclude that . . . obsessive behavior would give rise to a heightened fear of unlawful restraint or bodily injury on the part of a reasonable person in complainant's circumstances.") (additional citation omitted)). We concluded, however, that the evidence presented was insufficient to satisfy the statute.

We reach a different conclusion here. We reject defendant's assertion that the evidence here cannot support an anti-stalking order as a matter of law. Plaintiff testified that she perceived an implied threat of physical harm in defendant's communications. There was evidence to show that defendant's apparent obsession with plaintiff had not abated in almost ten years. Defendant told plaintiff that it had taken him almost a decade from her cancelled trip to Colorado "to get back in alignment." He wanted to continue engaging with plaintiff until "all the conflict is resolved." When plaintiff did not respond to his first email, he emailed her again, this time attaching a link to a lengthy song that he wrote to process his "trauma." He expressed an unwillingness to consider that his emails might be unwelcome, stating that "the process of being open and sharing is healing for me, whether or not it falls on deaf ears." The song itself, as recounted above, contains lyrics that reflect a deep ongoing romantic interest in plaintiff despite the significant passage of time, the absence of any relationship at the outset, and despite requests to leave plaintiff alone. His song lyrics reference a "psychotic mantra," death, and "life lost to a worthy cause."

We leave it to the trial court to evaluate this evidence. But considering defendant's acts in context, there is evidence here that could support a conclusion that this is a case where one party's fixation on another "could be shown to imply more serious threats of harm." Id. As in Noll, 2018 VT 106, ¶ 41, which we relied upon in Hinkson, the court here "could reasonably conclude that the prolonged character of defendant's course of conduct rendered" his latest emails "more, not less, threatening." Additionally, the fact "[t]hat defendant continued to harbor such intense feelings" for plaintiff could "suggest that, even after a number of years, he was obsessed with [her]." Id. Because the trial court rendered its decision prior to Hinkson, however, it did not make the type of findings we now require, including determining if a reasonable person in plaintiff's circumstances would infer from defendant's emails an "intent to inflict physical harm on another person." Hinkson, 2020 VT 69, ¶ 46. We thus remand for additional findings in light of Hinkson. The court's anti-stalking order will remain in place pending its amended ruling. Given our conclusion, we do not consider if there were other grounds, such as following and monitoring, to support the issuance of an anti-stalking order.

We are unpersuaded by defendant's remaining arguments. Defendant cites evidence that he believes shows that plaintiff was not afraid of him. We leave credibility evaluations and the assessment of the weight of the evidence to the trial court, however, and do not reweigh the evidence on appeal. See Cabot, 166 Vt. at 497. It is immaterial, moreover, whether defendant thinks a reasonable person would feel threatened under these circumstances. The fact that defendant stated to plaintiff that she did not need to listen to the song or to read his emails does

not negate his actions or obviate his words. It is reasonable to expect that the emails, including the song lyrics, would be read and plaintiff testified here that she was aware of the gist of the song because her father had listened to it on her behalf. Finally, we reject defendant's assertion that the court failed to consider all the evidence, including the exhibits he submitted. The court was not required to explicitly reject defendant's evidence in reaching its decision.

Remanded for additional findings.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice