

*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. 2020-243

JANUARY TERM, 2021

Arielle Tarbell v. Benjamin C. Tarbell*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Family Division
	}	
	}	DOCKET NO. 238-8-20 Rdfa
		Trial Judge: Robert A. Mello

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

Husband appeals a final relief-from-abuse order issued by the family court. We affirm.

The parties have been married for five years. In July 2020, husband initiated a divorce proceeding, which is pending in a separate docket. The following month, wife filed a complaint for relief from abuse against husband, alleging that he had attempted to harm her and had placed her in fear of imminent physical harm on two occasions in June and August 2020. The court entered a temporary relief-from-abuse order and held a final hearing at which both parties were represented by counsel.

At the hearing, wife testified that on June 23, 2020, she was out for a walk when husband began leaving voicemails and sending her messages asking her to bring him the keys to his truck. She returned to the marital residence and gave husband the keys. Husband then “did about a fifteen-minute burnout in the driveway with the truck,” and wife decided to leave. As she was departing in her own truck, wife stopped to ask husband a question about insurance. Husband immediately started yelling at wife that she needed to listen to him. She tried to back up the truck, and husband pushed on the truck and snapped her driver’s side mirror backward. She asked husband to let her leave, and he refused. She put the truck in first gear and started driving forward. As she did so, husband popped up “out of nowhere,” demanding that she listen to him. She told him to let go and that she was calling the police. He then lunged into the vehicle and broke her turn signal lever. She kept driving as he was hanging onto the window. He eventually let go and she called a friend for help. She was not able to leave the property because it was around ten o’clock in the evening and she could not operate her headlights with the broken turn signal lever. Police eventually arrived but did not issue any citations. Both wife and her friend testified that wife was terrified after the incident. Wife also alleged that husband had threatened her in August 2020 and abused her earlier in the marriage.

Husband testified that wife’s description of the June incident was “[p]retty much what happened, what she said happened,” except that he didn’t prevent her from leaving. He stated that wife stopped to ask him about the insurance, and he walked up to the truck and put his arms on it. She attempted to drive away, and he ran next to the truck because he feared that she was going to

run him over. He admitted that he broke the turn signal lever but denied that he did so intentionally. Husband denied wife's other allegations of abuse.

The court found that most of wife's allegations of abuse were not supported by sufficient evidence. However, it concluded that husband's actions on the evening of June 23 constituted stalking. It found that husband pursued wife as she was attempting to leave, then reached into the truck and broke her turn signal, which made it impossible for her to leave. The court found that husband's actions could cause a reasonable person to fear for his or her physical safety.

Husband's counsel asked the court to reconsider its decision, arguing that the stalking statute requires a course of conduct, or proof of more than one incident. The court clarified that it found two predicate acts: the first was husband following wife as she attempted to leave, and the second was husband reaching into the truck and breaking wife's turn signal. The court found that these incidents constituted a course of conduct sufficient to meet the statutory definition of stalking. It entered a six-month order prohibiting husband from abusing or stalking wife and directing him to stay 300 feet away from her.

On appeal, husband argues that the court erred in granting the relief-from-abuse order because there was insufficient evidence to support the court's conclusion that husband stalked wife. Because "the family court is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing," this Court reviews the family court's decision to grant 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." Raynes v. Rogers, 2008 VT 52, ¶ 9, 183 Vt. 513.

The family court is authorized to issue a relief-from-abuse order if it finds that the defendant has abused the plaintiff and there is a danger of further abuse. 15 V.S.A. § 1103(c)(1). The plaintiff has the burden of proving abuse by a preponderance of the evidence. Id. § 1103(b). Stalking, as defined in 12 V.S.A. § 5131(6), constitutes abuse. Id. § 1101(1)(D). Relevant here, "stalking" 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 . . . fear for his or her safety or the safety of a family member." 12 V.S.A. § 5131(6). A "course of conduct" is defined as "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).

Husband first claims that the court's finding that he followed wife is not supported by the evidence. He argues that his actions cannot be construed as "following" because he initially walked up to the truck in response to wife's question about the insurance. However, the court's finding was plainly based on husband's subsequent behavior. Wife testified that after she pulled away in an attempt to leave, when she slowed down to go over an embankment her husband "popped up out of nowhere" and continued to demand that she listen to him. Wife told husband to let go, but he did not and instead lunged his body into her car and started grabbing. Both she and husband testified that husband hung onto the truck and ran alongside her as she was trying to leave. This testimony is sufficient to support the court's finding that husband purposefully "followed" wife. Although husband argued that he was hanging on to the truck for his own safety, the trial court was not required to believe husband's version of events. See Raynes, 2008 VT 52, ¶ 9 (explaining that it is family court's role to assess credibility of witnesses and weigh evidence). And the trial court did not commit clear error in concluding that husband's pursuing wife as she tried to drive away, and then reaching into the car and grabbing constituted a course of conduct, or "two or more acts over a period of time, however short." 15 V.S.A. § 1101.

Husband further argues that his acts cannot be construed as “following” because he was on his own property and wife unilaterally decided to go there to bring him some keys. We find this argument to be unpersuasive. The statute does not require an act of following to take place in a public area or contain an exception for acts perpetrated on one’s own property. 12 V.S.A. § 5131(6); cf. Raynes, 2008 VT 52, ¶ 13 (explaining that defense of property is not an affirmative defense in abuse-prevention proceeding). Moreover, wife testified that she had returned to the marital home, where both parties had been staying, at husband’s request, which husband did not dispute. Regardless of how the incident began, the court’s finding that husband followed wife as she later tried to leave is amply supported by other evidence in the record. See Hinkson v. Stevens, 2020 VT 69, ¶ 26 (“We defer to the trial court’s factual findings if supported by the evidence.”).

Finally, husband claims that his act of breaking wife’s turn signal lever was not purposeful and therefore does not qualify as a second predicate act of stalking under 12 V.S.A. § 5131(1) and (6). Husband’s argument is based on his testimony that he broke the turn signal by accident and was not deliberately trying to disable wife’s headlights to prevent her from leaving. The trial court evidently found this testimony unpersuasive. “It is the province of the trial court to determine the credibility of witnesses and weigh the persuasive effect of the evidence.” Bruntaeger v. Zeller, 147 Vt. 247, 252 (1986). A reasonable trier of fact could conclude based on wife’s testimony and the circumstances of the incident that husband acted purposefully when he broke the turn signal lever. This act and husband’s pursuit of wife were sufficient to constitute a course of conduct that would cause a reasonable person to fear for his or her safety. The court therefore acted within its discretion in concluding based on the evidence presented that husband stalked wife.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice