

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-088

AUGUST TERM, 2002

Bonnie Beauchesne

v.

Gary Beauchesne

}	APPEALED FROM:
}	
}	Chittenden Family Court
}	
}	
}	DOCKET NO. 20-1-02 Cnfa
}	
}	Trial Judge: Brian Burgess
}	
}	
}	

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

Defendant Gary Beauchesne appeals pro se from a final relief from abuse order of the Chittenden Family Court. He raises a number of claims, including: (1) he was deprived of the opportunity to obtain counsel; (2) the court improperly relied on information about an alleged prior restraining order; (3) he was not afforded an adequate opportunity to present his side of the issues; and (4) the court rushed the proceeding to an end to deal with the next case. We affirm.

The parties had been married for about four years, but had been separated for several months, prior to the instant proceeding. On January 8, 2002, plaintiff filed an emergency request for relief from abuse, which the court issued that day. A final relief from abuse hearing was held on January 17. Plaintiff testified about several recent incidents in which defendant had grabbed her arm and attempted to prevent her from leaving her residence, blocked her car, and followed her until she was able to elude him. She stated that defendant had become enraged when she refused to speak with him, and that she feared for her safety. Defendant admitted that he had followed plaintiff in her car, but denied the other incidents. The court found plaintiff's testimony to be credible, and further found that defendant's actions had placed her in fear of imminent serious physical injury. Accordingly, the court granted a final relief-from-abuse order, requiring that defendant refrain from abusing, threatening, stalking, or contacting plaintiff. The court denied a subsequent motion to reconsider. This appeal followed.

Defendant first contends the court erred in denying a continuance for the purpose of obtaining counsel. Neither party was represented by counsel. Although defendant expressed some uncertainty about representing himself, the court determined through questioning that defendant had no savings, that legal aid had denied his request for assistance, and that there was no realistic possibility of defendant obtaining counsel through a continuance. As there was no constitutional or statutory right to counsel in this civil case, and the record supported the court's finding that a continuance would serve no realistic purpose, we cannot conclude that the court abused its discretion in denying a continuance. See Kohut v. Kohut, 164 Vt. 40, 45 (1995) (granting continuance is matter within court's discretion); cf. V.R.F.P. 9(h) (grounds for continuance may include lack of notice that opposing party will be represented by counsel).

Defendant next asserts that his lack of counsel hindered his decision to have an evidentiary hearing rather than to stipulate to a "no contact, no abuse" order. The record discloses that the court clearly explained to defendant that he could stipulate to a "no contact, no abuse" order if he admitted the alleged abuse, or could proceed with an evidentiary hearing. Defendant denied the alleged abuse, and opted to proceed with the hearing. The record discloses no prejudice to

defendant in this regard, nor has defendant established any prejudice. Accordingly, the claim is without merit.

Defendant next contends the trial court improperly relied on plaintiff's testimony that his former wife had also obtained a restraining order against defendant in New Hampshire. Defendant had testified, in response, that the prior order had been "dismissed." Although defendant asserts that the prior order was improperly considered by the court, the record shows that the court initially observed that any prior order was not particularly relevant, and later referred to it very briefly in discussing the reasonableness of plaintiff's perceived fear of defendant. We discern no error in the court's reliance on the testimony, which was used to show plaintiff's state of mind, not to demonstrate the existence of the order. See State v. Houle, 162 Vt. 41, 43 (1994). Nor, in any event, does the record establish that the testimony affected the court's findings and conclusions, which were based on substantial independent evidence. See Trombley v. Southwestern Vt. Med. Ctr., 169 Vt. 386, 397 (1999) (even with error, Court will not reverse unless prejudice is demonstrated).

Finally, defendant asserts that he was not afforded a clear chance to explain his side of the issue. The record discloses that although the trial court declined defendant's request to read a written statement, the court afforded defendant ample opportunity to address plaintiff's allegations and explain his version of events. We discern no error. Along the same lines, defendant complains of the court's reference, toward the end of the hearing, to the need to move on to another case. As noted, the videotape record demonstrates that defendant was afforded ample opportunity to present his case. We discern no unfairness or error in the court's statement.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

James L. Morse, Associate Justice

Marilyn S. Skoglund, Associate Justice