



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

NOVEMBER TERM, 2021

Kristina Root v. Cruze Samuel* } APPEALED FROM:
} Superior Court, Franklin Unit,
} Family Division
} CASE NO. 21-FA-01429
Trial Judge: Scot L. Kline

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

Defendant appeals the final relief-from-abuse order issued by the family division. We affirm.

Plaintiff and defendant were previously in a relationship and have a four-year-old daughter together. According to court records, plaintiff has sole legal and physical parental rights and responsibilities for daughter.* At the time this proceeding began, defendant apparently exercised some unsupervised parent-child contact, although the precise arrangement is not clear from the record.

In March 2021, plaintiff filed a complaint for relief from abuse against defendant in the family division. The court denied the complaint without a hearing. Around the same time, plaintiff filed a motion to modify parent-child contact in the parties' parentage proceeding. After a hearing on May 20, 2021, the court denied the latter motion. Plaintiff did not appeal these rulings.

In June 2021, plaintiff filed another complaint for relief from abuse alleging that defendant had recently abused her and daughter. At the evidentiary hearing, plaintiff testified that during a custody exchange on May 28, 2021, the parties' daughter began crying. Defendant pulled daughter's arm and said he would punish her if she didn't stop crying. Defendant then threatened plaintiff's husband and stated he was going to call the police to report a child kidnapping. Defendant threatened to blow plaintiff's head off and told plaintiff's children that they would be motherless. He said to her, "we're going to try to get you out of the picture, and then your husband next." He did not physically harm plaintiff during this incident, but she testified that he was angry and was acting unusual, as if he were on medication. The incident

* Although the records of the parentage proceeding are not part of the record in this case, this Court may take judicial notice of adjudicative facts, such as court orders. See V.R.E. 201(f) (providing that courts may take notice of adjudicative facts "at any stage of the proceeding").

ended once the police arrived. Plaintiff testified that during the incident, she feared that defendant would physically harm her. She was so frightened that she decided to leave the state. Defendant called and texted her incessantly afterward, and she eventually decided to seek an emergency relief-from-abuse order.

Plaintiff testified that when she was pregnant in 2017, defendant had tried to throw boiling water on her. When police came to the house, defendant got into a fight with an officer. Plaintiff subsequently obtained a one-year restraining order against defendant. On another occasion, around the time that defendant began having visitation with daughter, defendant had pushed plaintiff and tried to grab daughter out of her arms. Plaintiff described defendant as unpredictable, acting normal one minute and then getting suddenly angry the next. She did not know if he had any guns.

Plaintiff's husband testified that during the May 2021 incident, defendant threatened to punish daughter and yanked her arm. Husband got out of the car and confronted defendant. He recalled that defendant threatened to end plaintiff's life. He could not recall defendant's exact words, but he recalled that it sounded like defendant planned to shoot plaintiff.

Defendant then testified on his own behalf. He denied that he had tried to throw boiling water on plaintiff in 2017. He also denied that he threatened to shoot plaintiff, blow her head off, or make her children motherless. He stated that it was very difficult to have any conversations with plaintiff due to her husband.

The court found that during the May 2021 custody exchange, defendant became upset and yanked the daughter's arm. The court found plaintiff and her husband to be credible in their testimony that defendant had threatened to shoot plaintiff. The court found that the parties had a tumultuous relationship, and that in this context, defendant's threat could cause a reasonable person to fear serious imminent bodily injury. The court issued a one-year relief-from-abuse order finding that defendant had placed plaintiff in fear of imminent serious physical harm and there was a danger of further abuse. The order prohibited defendant from contacting plaintiff or their child, except that defendant could have supervised visitation with the child at All About Kids in St. Albans. Defendant appealed.

"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. Accordingly, we will affirm a family court's decision to grant a relief-from-abuse order unless the court abused its discretion, "upholding its findings if supported by the evidence and its conclusions if supported by the findings." Id.

Defendant argues on appeal that plaintiff's testimony at the hearing was inconsistent with her affidavit, included inadmissible hearsay, and does not support the court's findings that defendant abused her and that there was a danger of further abuse. Defendant asserts that plaintiff was dissatisfied with the court's rulings denying her previous requests for a protective order and to modify parent-child contact, and therefore manufactured her claims of abuse and committed perjury to obtain her desired result.

The abuse-prevention statute provides that "[t]he court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the court finds that the defendant has abused the plaintiff, and . . . there is a danger of further abuse." 15 V.S.A. § 1103(c)(1). The

statute defines “abuse” as the occurrence of one or more of a list of specific acts, including “[p]lacing another in fear of imminent serious physical harm.” *Id.* § 1101(1). Here, the family court found that defendant had abused plaintiff by threatening to shoot her and that in the context of their relationship, it was reasonable for her to fear imminent serious physical harm. The court further found that given the parties’ toxic relationship and past history of physical altercations, there was a danger of further abuse. These findings are supported by the nonhearsay testimony of plaintiff and her husband and are not clearly erroneous.

Defendant argues that he denied threatening plaintiff, that there was no evidence that he physically harmed her, and that she didn’t know if he had actually had a gun. He further argues that her testimony included hearsay statements by daughter and the police. As the plain language of the statute makes clear, a threat of imminent serious physical harm is sufficient to constitute abuse, and the court found that plaintiff reasonably feared such harm as a result of defendant’s statements and behavior during the May 2021 custody exchange. Inconsistencies in testimony or conflicting evidence do not make findings clearly erroneous if they are otherwise supported by the record, as they are here. See *Gilbert v. Davis*, 144 Vt. 459, 461 (1984) (“The ruling of the court must stand if supported by credible evidence, even though there may be inconsistencies or substantial evidence to the contrary.”). Although plaintiff’s testimony did include some hearsay, defendant did not object to this testimony and the court did not rely on it in its findings. We therefore see no error.

According to defendant, the court improperly based its finding that there was a danger of further abuse on plaintiff’s testimony that he attempted to throw boiling water on her in 2017, because evidence of prior bad acts is typically inadmissible to prove that a person acted in conformity therewith on a later occasion. See V.R.E. 404. But the court did not find a danger of further abuse based on the 2017 incident. Rather, the court concluded that the boiling-water incident showed that the parties’ relationship was historically volatile and that, in this context, it was reasonable for plaintiff to fear serious bodily harm as a result of defendant’s threats of violence. This argument therefore lacks merit.

Next, defendant claims that the fact that he called the police during the May incident shows that he was acting in self-defense. He argues that under these circumstances, plaintiff could not reasonably fear future abuse from him. As discussed above, the court’s finding that defendant’s threat to shoot plaintiff placed her in fear of harm was supported by the evidence. Defendant does not explain what plaintiff supposedly did to cause him to act in self-defense, and the record does not support his claim.

Defendant argues that the court erred in modifying parent-child contact to require supervised visitation. We see no error. The abuse-prevention statute provides that when a court finds abuse, it may make “[a]n order for parent-child contact under such conditions as are necessary to protect the child or the plaintiff, or both, from abuse.” 15 V.S.A. § 1103(c)(2)(D). “[T]he provisions of the abuse-prevention statute make clear that the Legislature intended to permit family courts to make temporary custody and visitation decisions in a relief-from-abuse proceeding when there is evidence that the children had been abused or were in danger of being abused.” *Peachey v. Peachey*, 2021 VT 78, ¶ 17. Here, the court found that during a custody exchange, defendant had yanked daughter’s arm and threatened to punish her unless she stopped crying, and then went on to threaten plaintiff’s life. The court evidently concluded that a

temporary period of supervised visitation was required to avoid further abuse to daughter or plaintiff. Defendant has not shown that this was an abuse of the court's discretion.

Finally, defendant accuses plaintiff of engaging in custodial interference and kidnapping when she took daughter out of state following the May incident. He argues that plaintiff's behavior was not in daughter's best interests and that this Court should modify the existing custody order to give him sole legal and physical rights and responsibilities. That order was entered in the parentage proceeding, which is separate from this abuse-prevention case, and is not on appeal before this Court. If defendant wishes to modify parental rights and responsibilities, he must address his request to the family court in the first instance. See 15 V.S.A. § 668.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice