*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. 2019-225

NOVEMBER TERM, 2019

| Jodi Adams v. John D. Nichols* | } | APPEALED FROM: |
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| | } | 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 from the family division's order on remand reaffirming its issuance of a final relief-from-abuse (RFA) order requested by plaintiff. We affirm.

At the conclusion of a December 6, 2018 evidentiary hearing, during which both parties testified, the family division entered a final RFA order concluding that defendant had abused plaintiff by stalking her and that there was a danger of future abuse. The court ordered defendant not to contact plaintiff directly or indirectly in any manner for a period of one year.

Defendant appealed, and this Court reversed and remanded for additional findings. See Adams v. Nichols, No. 2019-017, 2019 WL 2005798 (Vt. May 6, 2019) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo19-017.pdf [https://perma.cc/9RWG-P8BY]. After detailing both parties' testimony and the court's findings, we acknowledged that there was sufficient evidence in the record from which the family division could have concluded that defendant had stalked plaintiff. Id. at *1-3. Moreover, we rejected defendant's arguments that the family division misconstrued the evidence, failed to give enough weight to certain evidence, or erred in crediting plaintiff's testimony. Id. We concluded, however, that the court "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.' " Id. at *3 (quoting from definition of stalking set forth in 12 V.S.A. § 5131(6)(B)(ii)). Accordingly, we remanded the matter for the family division to make "specific findings on the elements of stalking set forth above." Id.

On remand, the family division reiterated that defendant had purposefully engaged in a course of conduct by repeatedly communicating with plaintiff both directly and indirectly after she had made it clear to him that she did not want any further communication from him. The court noted that the unwanted communications came against a backdrop of defendant refusing to accept that the parties' relationship had ended. With regard to the remand mandate, the court found that defendant knew or should have known that his actions would cause a reasonable person to experience substantial emotional distress, given the clarity and strength of plaintiff's communications demanding that defendant not contact her, as well as the fact that some of

defendant's communications were aimed at disguising their source. The court found that plaintiff's substantial emotional distress was evidenced by plaintiff's testimony concerning significant adjustments she had made at her home, work, and church to avoid contact with defendant. The court indicated that it based its decision, in part, on its in-person observations of the parties during the court proceedings.

As we emphasized in our earlier decision, it is within the exclusive province of the trial court to weigh the evidence and determine the credibility of the witnesses. See Raynes v. Rodgers, 2008 VT 52, ¶ 9, 183 Vt. 513 (stating that because family division "is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing," this Court reviews the family division's "decision to grant or deny 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"). For the most part, defendant challenges the family division's findings concerning defendant's course of conduct, which, as we indicated in our earlier decision, were supported by evidence presented at the December 6 hearing. We will not disturb the trial court's weighing of the evidence and assessment of the credibility of witnesses in finding that defendant continued to communicate with plaintiff, both directly and indirectly, after she made it clear to him that she did not want any further communication from him. The context here matters; the unwelcome contact occurred after defendant had told a third party in a text message that he wanted to punish plaintiff.[*] Further, plaintiff testified that defendant has a history of showing up at her doorstep, calling, texting, and emailing relentlessly until she gives in because it is "easier to not fight it." The court could conclude based on plaintiff's testimony that defendant's conduct was obsessive in a menacing way. See State v. Ellis, 2009 VT 74, ¶ 26, 186 Vt. 232 ("We do not dispute that obsessive behavior, without threats or attempted acts of violence, can cause a reasonable person to fear unlawful restraint[.]"); see also Huch v. Marrs, 858 So.2d 1202, 1203 (Fla. Dist. Ct. App. 2003) (citing scholarly conclusion that stalking and obsessive or possessive behaviors indicate high risk to complainants); State v. Lindell, 828 N.W.2d 1, 8 (Iowa 2013) (citing authority for proposition that "stalking behavior often escalates into violence as time passes and the stalker's obsession with the victim grows").

Moreover, plaintiff's testimony from the December 6 hearing supported the court's supplemental findings on remand that defendant knew or should have known that his actions would cause a reasonable person substantial emotional distress and that in fact plaintiff's distress was evidenced by the significant adjustments she made at her home, work, and church to avoid contact with him. Defendant argues that those adjustments were not significant, as indicated by plaintiff's testimony that she changed her work schedule "a little bit" and that it was "a little uncomfortable" dealing with defendant's increased interest in attending services at the church to which she belonged. The record demonstrates, however, that plaintiff made significant efforts to avoid further communications from defendant, including contacting police, blocking his telephone number, and making various adjustments to her daily routines to reduce the possibility of having contact with him.

Affirmed.

[*] Defendant did not deny making the statement, but argued that in context it was not what it seemed.

BY THE COURT:

_______________________________________
Paul L. Reiber, Chief Justice

_______________________________________
Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice