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. 2018-281

MARCH TERM, 2019

Aimee Raine v. David W. Cameron*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Family Division
	}	
	}	DOCKET NO. 234-9-17 Frfa
		Trial Judge: Martin A. Maley

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

Defendant appeals from the extension of a final relief-from-abuse (RFA) order. We affirm.

Plaintiff initially sought an RFA order in September 2017. A hearing on the complaint was heard on September 26, 2017. Defendant was reportedly incarcerated and did not appear at the hearing. Following the hearing, the family division of the superior court issued a final RFA order to be in effect for one year from the date of the hearing. Defendant did not appeal that order.

In August 2018, plaintiff sought to extend the RFA order, alleging that defendant had followed her each day for ten days a few weeks earlier before he was arrested. Defendant, who was incarcerated at that point, moved to be physically present for the hearing on the request to extend the RFA order, which was scheduled for August 20, 2018. The family division denied the motion but allowed defendant to appear by telephone. Following the August 20 hearing, at which defendant appeared by telephone, the family division extended the RFA order for two years.

On appeal, defendant argues that he had a constitutional right to appear at the September 26, 2017 hearing, that the family division violated Vermont law by denying his request to be physically present at the August 20, 2018 hearing, and that the trial judge should have recused himself based on his having presided over a recent criminal proceeding in which defendant entered pleas to several charges, including violations of the RFA order that was extended in the instant proceeding.

As for defendant's first argument concerning the initial order, RFA proceedings are civil proceedings intended to protect victims of domestic abuse and not criminal proceedings aimed at punishing offenders. See Raynes v. Rogers, 2008 VT 52, ¶¶ 10, 13, 183 Vt. 513. Section 1105(a) of Title 15 requires service on the defendant of a complaint seeking an RFA order. In this case, the record reveals that defendant was personally served with the complaint, the affidavit in support of the complaint, the temporary order, and notice of the September 26, 2017 hearing date. Nothing in the record indicates that defendant alleged insufficient service or sought to continue the hearing or participate by telephone. See Rollo v. Cameron, 2013 VT 74, ¶¶ 10-12, 194 Vt. 499 (holding that defense of insufficient service is waived if not raised before or at RFA hearing and that failure to do so results in waiver of challenge to default judgment on appeal). Nor did defendant timely appeal from the final order issued on September 26, 2017. Therefore, he has waived any challenge to that order.

We also reject defendant's challenge to the family division's denial of his motion to be physically present at the August 20, 2018 hearing. "By statute, relief-from-abuse proceedings are governed by the Vermont Rules for Family Proceedings." Id. ¶ 6; see 15 V.S.A. § 1106(a) (stating that abuse-prevention proceedings "shall be in accordance with the Vermont Rules for Family Proceedings"). Under those rules, the family division "may require any witness or party to testify or participate in a hearing by telephone if the court finds" that the testimony is necessary and "the witness or party is either physically unable to be present or cannot be produced without imposing substantial administrative burdens or costs on the state." V.R.F.P. 17(a)(1). Although the court did not make a specific finding to this effect, it appears that defendant was incarcerated, and we can assume that the court was unwilling to allow the administrative burden of transporting him to the hearing. We further note that defendant did not order a transcript of the August 20, 2018 hearing. He stated in his docketing statement that a hearing was unnecessary to resolve the issues he is raising on appeal. Yet, he complains that he could not hear the proceedings. Because we have no transcript of the hearing, informed appellate review is impossible, and thus defendant has waived his right to raise issues regarding his ability to effectively participate in the hearing. See V.R.A.P. 10(b)(1) (providing that appellant must order transcripts "of all parts of the proceedings relevant to the issues raised by the appellant" and that failure to do so results in waiver of "the right to raise any issue for which a transcript is necessary for informed appellate review"); see also In re Joyce, 2018 VT 90, ¶ 21 (citing cases in support of this rule).

Nor has defendant preserved his contention that the trial judge should have recused himself because, according to defendant, the judge cited at the RFA hearing defendant's criminal violations that the judge had recently adjudicated. Public court records indicate that in 2018 the judge presided over criminal proceedings in which defendant pled guilty to a number of charges, including alleged violations of the original RFA order. At the civil RFA proceeding on appeal, defendant did not seek the judge's recusal; therefore, his argument is waived. Moreover, the judge's recusal was not compelled by the mere fact that the judge presided over the criminal proceedings in which defendant pled guilty to violating the RFA order that plaintiff wished to extend. To the extent defendant is arguing that the judge's comments at the RFA hearing demonstrated the judge's bias, we cannot evaluate that argument without a transcript. See Ball v. Melsur Corp., 161 Vt. 35, 45 (1993) (observing that judicial bias "must be clearly established by the record" and is not shown merely "by pointing out only a number of unfavorable . . . rulings"), abrogated on other grounds by Demag v. Better Power Equip., Inc., 2014 VT 78, 197 Vt. 176; see also Ainsworth v. Chandler, 2014 VT 107, ¶ 15, 197 Vt. 541 (stating that courts enjoy "presumption of honesty and integrity" and thus burden is on "the moving party to show otherwise" (quotations omitted)). Defendant has not met that burden.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice