

*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. 2019-074

NOVEMBER TERM, 2019

Theodore I. Weitz* v. Sheryl Weitz	}	APPEALED FROM:
	}	
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	
	}	DOCKET NO. 187-7-18 Bnfa
		Trial Judge: David A. Barra

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

Husband appeals from the family division’s denial of his motion seeking a final relief-from-abuse (RFA) order against his wife for stalking him. We affirm.

Following an evidentiary hearing in which both husband and wife testified, the family division denied husband’s motion based on the following findings and conclusions. Husband resided in Winhall, Vermont, with wife and the parties’ two children before wife left with the children in May 2016 and moved to Massachusetts. She took money from a bank account jointly held by the parties before and shortly after she left. In August 2016, at a time when the parties were engaged in legal actions in which husband’s physical residence was at issue, wife entered the parties’ properties in Vermont and New Hampshire and video recorded the contents of both properties. She also recorded the contents of the parties’ mailbox in Vermont. She posted the videos on Facebook for a short time before removing them.

Divorce proceedings are pending in multiple states, and, in the meantime, wife has primary legal and physical custody of the children. In January 2018, husband accidentally sent a naked photograph of himself to the parties’ daughter instead of a female friend. After seeing the photograph while reviewing an iCloud account she shared with the parties’ daughter, wife reported her concerns to the Massachusetts child welfare agency, which investigated the matter but took no further action. Husband admitted in a statement to the Massachusetts child welfare agency that he had sent the photograph, but he accused wife of hacking into an iCloud account shared only by him and the parties’ daughter and showing it to their daughter. The court concluded that husband presented no credible evidence that wife hacked into that account or his Facebook account or that she reported him to the FBI or attempted to extort money from him, as he claimed.

In relevant part, a person alleging abuse by a family or household member must show by a preponderance of evidence that the family or household member committed the abuse and that there is a danger of future abuse. 15 V.S.A. § 1103(a), (b), (c)(1); see Raynes v. Rogers, 2008 VT 52, ¶ 8, 183 Vt. 513. Stalking, as defined in 12 V.S.A. § 5131(6), constitutes abuse. 15 V.S.A. § 1101(1)(D). Section 5131(6) defines stalking as:

engag[ing] 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: (A) fear for his or her safety or the safety of a family member; or (B) suffer substantial emotional distress as evidenced by: (i) a fear of unlawful sexual conduct, unlawful restraint, bodily injury, or death; or (ii) significant modifications in the person's actions or routines, including moving from an established residence, changes to established daily routes to and from work that cause a serious disruption in the person's life, changes to the person's employment or work schedule, or the loss of a job or time from work.

In this case, the family division grouped husband's allegations against wife into six categories and rejected each of them. Regarding husband's claim that wife took money from him when she left in May 2016, the court noted that the money was in a joint account and that husband had failed to show how taking the funds amounted to stalking. As for husband's claims concerning wife's taking videos of their properties and their mail, the court found that she jointly owned the properties at the time, that she never opened the mail, and that there was a legitimate basis for making the recordings. Regarding the naked photograph, the court stated that it could not conclude from the evidence that wife obtained the photograph improperly. The court further concluded that, once she found the photograph, she had a legitimate interest in having it investigated. As for husband's claims that wife brought her concerns about husband dating underage girls to the attention of authorities, the court concluded that none of wife's alleged actions rose to a level that would cause a reasonable person to fear for his safety or suffer substantial emotional distress. As noted above, the court concluded that the evidence did not support husband's claims that wife had hacked into his accounts. Regarding husband's extortion claims, the court concluded that nothing in the online conversations husband relied upon showed extortion or supported a stalking claim. Finally, the court concluded that husband had failed to present any evidence that there was a danger of future abuse. Accordingly, the court denied husband's request for a final RFA order.

In his brief challenging the family division's decision denying his request, husband makes the same allegations against wife that he made before the family division, but he makes no attempt by reference to the record or relevant law to demonstrate that the court's findings are unsupported by the record or that the findings do not support the court's conclusions and its decision to deny his request for relief. Upon review of the record, we find no basis to disturb the family division's findings or conclusions, which support the court's denial of husband's request for relief. See Raynes, 2008 VT 52, ¶ 9 (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").

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