

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. 2019-107

NOVEMBER TERM, 2019

Anna St. Lawrence v. Joseph St. Lawrence*	}	APPEALED FROM:
	}	
	}	Superior Court, Grand Isle Unit,
	}	Family Division
	}	
	}	DOCKET NO. 4-2-19 Gifa
		Trial Judge: Robert A. Mello

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

Husband appeals the family division’s decision granting wife’s request for a final relief-from-abuse order. We affirm.

On February 8, 2019, wife filed a complaint for relief from abuse against husband in the family division, alleging that husband had threatened to kill her by smashing a glass bottle over her head. The court issued a temporary order prohibiting husband from contacting wife or going to the marital residence. On February 21, 2019, the court conducted a hearing. Both parties attended and were represented by counsel.

Following the hearing, the court concluded that husband placed wife in fear of imminent serious physical harm and found that there was a risk of further abuse. It issued a final order directing husband to stay at least 300 feet away from wife, the marital residence, her place of employment, her motor vehicle, and her cats until February 21, 2020. Husband appealed.

The court may grant a relief-from-abuse order if it finds by a preponderance of the evidence that “the defendant has abused the plaintiff” and “there is a danger of further abuse.” 15 V.S.A. § 1103(b), (c)(1). Abuse is defined as “the occurrence of one or more of” specified acts between family or household members. 15 V.S.A. § 1101(1). The relevant act in this case is “[p]lacing another in fear of imminent serious physical harm.” *Id.* § 1101(1)(B). We review the family court’s decision to grant a protective order for abuse of discretion, “upholding its findings if supported by the evidence and its conclusions if supported by the findings.” *Raynes v. Rogers*, 2008 VT 52, ¶ 9, 183 Vt. 513.

Husband first argues that there was insufficient evidence to support the court’s determination that he placed wife in fear of imminent serious physical harm. We disagree. Wife testified that on the date in question, she and husband had an argument over financial matters. The parties had a large veterinarian bill for one of their cats, and husband learned that wife had taken out a bank loan of over \$5000 without his knowledge and spent it on clothes. He became very angry and began yelling at wife. Wife testified that he threatened to take a glass bottle of hard lemonade that was on the counter and smash it over her head until the bottle was broken, her skull

cracked open, and she was dead. He also threatened to shoot the cats and to blow his own head off. He had already smashed the coffee maker. Husband later admitted to police that he had threatened to hit wife with the glass bottle. Police found three unsecured, loaded firearms in the bedroom. Wife testified that she was frightened by husband's statements and called her parents for help. Wife's mother corroborated that husband was yelling at wife. The family court found wife's statements to be credible, and they are sufficient to support its determination that wife was in fear of imminent serious physical harm.

Husband argues that wife failed to show that she was actually frightened or that harm was imminent because the evidence showed that she stayed in the room and kept arguing with husband for over an hour after he made the threatening statements. Husband essentially challenges wife's credibility. However, it is for the family court, not this Court, to determine the credibility of witnesses and weigh the evidence. Raynes, 2008 VT 52, ¶ 9. As discussed above, the court's finding that wife feared imminent serious physical harm was supported by the record. We may not, therefore, set it aside merely because there is conflicting evidence. Crawford v. Lumbermen's Mut. Cas. Co., 126 Vt. 12, 16 (1966).

Husband further claims that he had never previously harmed wife and therefore she could not have perceived his words as an actual threat. The issue is not whether defendant intended to carry out his threat, but whether plaintiff's fear was reasonable under the circumstances. Smith v. Hawthorne, 2002 ME 149, ¶ 18, 804 A.2d 1133 (recognizing that victim's fear had to be reasonable for abuse to be found). Husband's specific threats to hurt wife using a weapon that was near at hand, coupled with his anger, yelling, and threats to shoot himself and the cats, could have led wife to reasonably fear for her safety.

Finally, husband argues that there was no evidence to support the court's determination that there was a danger of further abuse. The court reasonably concluded otherwise, however. Wife testified that husband had previously made similar threats and that she had felt afraid during these incidents. She testified that the threats had occurred frequently since the summer of 2018. The court acted within its discretion in finding wife's testimony to be credible and in concluding based on this evidence that there was a danger of further abuse.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice