

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. 2019-286

JUNE TERM, 2020

Amy Elliott v. Dane Kross*

} APPEALED FROM:

}

} Superior Court, Orleans Unit,
} Family Division

}

} DOCKET NO. 85-6-19 Osfa

Trial Judge: Howard E. Van Benthuisen

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

Defendant appeals pro se from a relief-from-abuse (RFA) order issued by the family court. We affirm the court's order but remand for it to consider defendant's motion to modify.¹

Plaintiff and defendant were formerly in a romantic relationship and have a son together. In June 2019, plaintiff filed an RFA petition against defendant, alleging that defendant had placed her and their son in fear of imminent physical harm and had abused their son. A hearing was held in July 2019. Defendant was represented by counsel. The parties agreed to waive an evidentiary hearing and findings by the court. They stipulated to entry of a final relief-from-abuse order that prohibited defendant from contacting plaintiff and directed defendant to have supervised parent-child contact with the parties' son at The Family Room in Newport. The order is in effect until July 16, 2020.²

¹ Defendant requested oral argument but did not appear at the scheduled time or otherwise contact this Court, despite being duly noticed of the date and time of argument by both electronic and U.S. mail. Plaintiff notified the Court that she would not be participating in the oral argument.

² We assume for the purposes of this appeal only that the July 16, 2019 RFA order that defendant has appealed is the operative order with respect to parent-child contact. It is not entirely clear that that is correct. There is an open parentage case involving these parties. The June 18, 2019 stipulated temporary order in the RFA case provided, "D may have supervised parent-child contact at the Family Room pending agreements or orders in the pending parentage case Docket #94-6-19 Osdm." (Emphasis added.) We take notice of the fact that the same day, the court issued an order in the parentage case, attaching the same stipulation providing that "D may have supervised parent-child contact at the Family Room" pending agreements or orders in the parentage docket. As of June 18, 2019, the order in the parentage case, rather than the order in the RFA case on appeal here, appears to be the controlling order. However, the subsequent July 16, 2019 final RFA order assigns parental rights and responsibilities to plaintiff and provides, "Contact shall occur only at the Family Room supervised visitation center. Defendant will have to re-establish contact with the Family Room and re-establish his privilege to visit there." Then, in

On appeal, defendant argues that the relief-from-abuse order is unfair because he has never abused his son. However, defendant waived any challenge to the factual basis for the order by agreeing that the court could enter an order in favor of plaintiff without holding a hearing or making findings. See Estate of Emilo v. St. Pierre, 146 Vt. 421, 424 (1985) (holding that where defendants, who were represented by counsel, stipulated that judgment should be entered in favor of plaintiff, they were bound by judgment); Angolano v. City of S. Burlington, 142 Vt. 131, 136 (1982) (“Once a party agrees to a stipulation he or she is bound by it . . .”). We therefore see no basis to disturb the order.

Defendant further asserts that a representative from the Family Room has told him that they do not have staff available to supervise visits, so he has been unable to have contact with his son. He asks this Court to “reopen” the RFA petition so he can “try for a better visitation schedule.” To the extent that defendant is seeking to modify the terms of parent-child contact under the order, such a request is properly addressed to the family court in the first instance. See 15 V.S.A. § 1103(e) (“The court may modify its order at any subsequent time upon motion by either party and a showing of a substantial change in circumstance.”). The docket entries for this case indicate that defendant filed a motion to modify the order on the same day that he filed his notice of appeal to this Court. The motion remains pending in the family court. We accordingly remand for the family court to address the motion. The family court should consolidate the RFA and parentage cases and resolve outstanding issues concerning parent-child contact in the latter docket. In order to fully vest the family division with jurisdiction in both dockets on remand, we make our mandate effective immediately.

Remanded for the family division to address defendant’s pending motion to modify; otherwise, affirmed. The mandate shall issue immediately.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice

December 2019, the family division issued an order in the parentage docket adjudicating defendant’s parentage and addressing the unavailability of the Family Room for supervised visitation and ordering the parties to access Northeast Kingdom Community Action (N.E.K.A.) as an alternative option for supervised contact. Assuming without deciding that the order relating to visitation in the RFA docket is, in fact, the operative order, we note that by its terms, unless it is extended, the RFA is set to expire on July 16, 2020, and thus is not the proper vehicle for addressing parent-child contact on an ongoing basis. We note that the court has a final hearing in the parentage case on June 15, 2020. That is the right forum to address these issues.