

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. 2020-096

SEPTEMBER TERM, 2020

Rachel Strecker v. William Strecker*	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Family Division
	}	
	}	DOCKET NO. 26-2-20 Rdfa
		Trial Judge: Robert A. Mello

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

Defendant appeals the court’s decision granting plaintiff a relief-from-abuse (RFA) order. On appeal, defendant challenges the court’s findings and its conclusion. We affirm.

In January 2020, plaintiff filed RFA petitions against defendant, her husband, on behalf of herself and the parties’ three children. Plaintiff alleged after she left the relationship in July 2019, defendant exhibited increased threatening and erratic behavior, including throwing things at her and disparaging her in front of their children. Plaintiff also stated that defendant had sent her unwanted communications, including in excess of fifty unwanted text messages, emails, and telephone calls. She stated that she felt scared and harassed by the content and extent of defendant’s communications. The court granted a temporary protective order which included a condition that defendant not contact plaintiff. A week later, defendant filed his own RFA application, which was opened under a different docket, and the request for a temporary order was denied.

At the final hearing, the court indicated it would hear both RFA petitions at the same time. Plaintiff requested a final RFA order on behalf of herself and the children. She testified that the parties had a toxic relationship and that after she left the relationship defendant harassed and threatened her by sending her unwanted text messages, emails, and telephone calls. She stated that he emailed her earlier on the day of the final hearing while the temporary order of protection was in place and in violation of it. Plaintiff testified that defendant threatened to contact her employers and the bar association and embarrass her. Plaintiff also testified that defendant had contacted her employer by email, asking for money and threatening to show up at her workplace. She stated that defendant had told the children that plaintiff does not love them and abandoned them.

Defendant also testified. He did not dispute that he had emailed plaintiff at 2:45 a.m. the morning of the final hearing while the temporary order was in effect but claimed the content of the communication was related to the children. Defendant agreed that he did contact plaintiff’s employer. Defendant denied ever physically harming plaintiff. He admitted to throwing a shoe at her but stated that he did not intend to strike her with it. He agreed that he had told the children plaintiff did not love them but had not done it in some time. In support of his petition for an RFA,

defendant alleged that plaintiff had physically harmed him and called him names in front of the children.

The court made oral findings on the record. The court concluded defendant had not physically harmed plaintiff but had stalked plaintiff through unwanted communications that caused her to fear for her safety. The court found that defendant continued to harass plaintiff even after the temporary order was in place. The court granted plaintiff an RFA, directing defendant to have no contact with plaintiff and not to stalk her.¹ The court did not find that the evidence supported issuing an order on behalf of the children but did order defendant not to disparage plaintiff in front of the children. Considering defendant's request for a relief from abuse order, the court found that defendant did not prove abuse within the meaning of the statute and denied defendant's request for an RFA. The RFA order requested by plaintiff issued on February 14, 2020.²

On March 9, 2020 defendant moved to modify the RFA to allow him to contact plaintiff by telephone for the purpose of communicating with the parties' children and about the parties' finances. The court modified the order to allow defendant to communicate with plaintiff regarding the children solely through the "Talking Parents" application, through a video call initiated by plaintiff at a particular time, and by telephone in the event of a medical emergency.

Defendant filed this appeal on March 13, 2020 citing the docket in which the court granted plaintiff an RFA.³ On appeal, defendant argues that the court erred in finding that he had violated the temporary RFA order by emailing plaintiff. Defendant claims that he did not violate the temporary order because his contact pertained to the children. In evaluating the evidence presented in an RFA proceeding, "the family court is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing." Raynes v. Rogers, 2008 VT 52, ¶ 9, 183 Vt. 513. Therefore, this Court reviews the court's decision granting an order for an abuse of discretion and will uphold the findings if supported by the evidence. The court did not abuse its discretion in finding that defendant's communication fell outside the limited contact allowed by the temporary order and that he violated the terms of that order.

Defendant next asserts that the court erred in concluding that he had stalked plaintiff because his actions would not cause a reasonable person to fear for safety. An RFA is intended to "protect victims from future abuse, rather than to hold perpetrators liable for past acts of violence." Id. ¶ 8. To obtain relief, plaintiffs must prove that a family member abused them and that there is

¹ The written order mirrored the court's oral findings, stating that defendant had abused plaintiff by stalking her and that there was a danger of future abuse. The court ordered defendant to not abuse, threaten, or stalk plaintiff and to have no contact with plaintiff. The order specified that defendant should not take action to alienate the children from their mother.

² While the appeal was pending at this Court, plaintiff filed a notice with the Court indicating that the RFA order was vacated based on plaintiff's motion. Because of the negative collateral consequences that can result even after an RFA expires, we conclude that the matter is not moot. Hinkson v. Stevens, 2020 VT 69, ¶ 21 (holding that "when a defendant appeals a stalking order while still subject to the stalking order, the expiration of the stalking order will not automatically render the case moot").

³ Defendant did not appeal the order denying his request for an RFA. Therefore, we do not address his arguments regarding this decision.

a danger of future abuse. 15 V.S.A. § 1103. Abuse includes stalking, *id.* § 1101(1)(D), which is defined as follows:

“Stalk” means to engage 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.

12 V.S.A. § 5131(6). Here, the court found that defendant had abused plaintiff by stalking her. The court found that defendant had subjected plaintiff to unwanted communication, even after plaintiff had obtained a temporary order prohibiting defendant from contacting her, and that defendant’s communications would cause a reasonable person to fear for her safety.

Defendant argues that his conduct did not amount to stalking because he had limited contact with plaintiff and the content of his communications was reasonable. The court’s findings regarding the amount and content of defendant’s communications are supported by plaintiff’s testimony and therefore we will not disturb them on appeal. See *Raynes*, 2008 VT 52, ¶ 9 (reciting that trial court’s findings subject to deferential standard of review). As a legal matter, we conclude that the evidence is sufficient to support the court’s conclusion that defendant’s actions amounted to stalking. *Hinkson v. Stevens*, 2020 VT 69, ¶ 26 (explaining that legal conclusions are reviewed without deference). Plaintiff’s testimony was sufficient to support a finding that defendant engaged in a course of conduct that caused her to fear for her safety. Plaintiff stated that defendant contacted her repeatedly by electronic means with harassing messages. She stated that if she blocked a number, he would create a new one. That he disparaged her in person in front of their children. Plaintiff stated that defendant threatened to harm her by contacting her employer,⁴ and contacting the Office of Professional Responsibility to get her law license revoked. Plaintiff testified that the defendant did contact her employer with a harassing message asking for money and threatening her, and that defendant stated that he would make plaintiff pay for what she was doing. Plaintiff also testified that defendant’s behavior had become more erratic and that she feared for her safety. This testimony supports that defendant stalked plaintiff by subjecting

⁴ Defendant argues that there is no basis for plaintiff’s claim that she feared defendant’s actions would cause her to lose her job since it was clear from her employer’s representation of plaintiff at the RFA hearing that her job was not in jeopardy. The fact that defendant’s actions did not actually result in plaintiff losing her job does not retract from the finding that defendant stalked plaintiff by engaging in a course of conduct which caused her to fear for her safety. This course of conduct included defendant’s actions of contacting her employer and threatening to contact plaintiff’s professional regulatory organization to attempt to disparage plaintiff and threaten her livelihood.

plaintiff to repeated unwanted communication and this communication caused her to fear for her safety. See State v. Ellis, 2009 VT 74, ¶ 26, 186 Vt. 232 (noting that “obsessive behavior, without threats or attempted acts of violence, can cause a reasonable person to fear” for his or her safety).

Defendant’s final argument is that the proceeding seemed rushed and the court focused more heavily on plaintiff’s allegations than his own. The record reflects that the court provided both parties an adequate opportunity to testify and to present the court with information relevant to the parties’ claims. Moreover, defendant failed to preserve this argument for appeal. O’Rourke v. Lunde, 2014 VT 88, ¶ 17, 197 Vt. 360 (explaining that “issues that are not presented to the trial court cannot be raised on appeal”). Defendant did not request more time at the hearing and has not identified what additional information he was prevented from providing to the judge.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice