



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

OCTOBER TERM, 2021

Ashley Metcalfe v. Chad Brennan*	}	APPEALED FROM:
	}	Superior Court, Bennington Unit,
	}	Family Division
	}	CASE NO. 21-FA-00053
		Trial Judge: Cortland Corsones

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

Father appeals pro se from the trial court's issuance of a relief-from-abuse (RFA) order to mother. He argues that the court's findings are not supported by the evidence. He also asserts that the court erred in temporarily modifying parental rights and responsibilities (PRR) pending resolution of the modification question by the family division.¹ We affirm.

Mother filed a RFA complaint in January 2021. She alleged that father physically abused her several times over the prior three months. She also alleged that father verbally abused the parties' minor children. Mother expressed fear for herself and the children. Mother testified at the final hearing that she lived with father and the children, and she testified about the events described in her complaint. She also presented testimony from her mother and from a neighbor. Father testified and denied abusing mother.

The court granted mother's request for relief. It acknowledged that the case presented a credibility contest and deemed mother more credible based on the details she provided and her demeanor while testifying. The court found that father abused mother by causing her physical harm and placing her in fear of imminent serious physical harm and that there was danger of further abuse. More specifically, the court found that the parties had an argument, father became angry at mother, lunged at her, and pushed her into a corner, causing pain to mother's hip. In the process, father smashed a coffeemaker and damaged a fish tank, putting mother in fear of imminent serious bodily injury as well. The children heard what was going on from a different room and they were very upset. Out of fear, the children called their maternal grandmother who

¹ We reject mother's contention that father "waived his right to appellate review" by failing to meet this Court's briefing standards. We can discern father's arguments and we address them on the merits.

in turn called police. The court further found that there had been other times when father had put mother in fear of bodily injury in the past. The parties appeared to agree that their relationship was toxic and that, if they were together, there was a danger of ongoing abuse. In its order, the court also temporarily modified PRR to award mother “51%” of physical rights and responsibilities pending a decision from the Family Division on mother’s motion to modify.² This appeal followed.

Father argues on appeal that the evidence was insufficient to support the court’s findings because mother did not present any eyewitnesses to the incident or other evidence such as photos or medical records. He also complains that mother failed to present evidence that she remained afraid of him, asserting that mother testified that she chose to live with him rather than staying with family and friends. Father further argues that the court failed to provide sufficient detail about prior instances of abuse. According to father, the court found mother more credible because she was allowed to testify to unrelated matters. Finally, father notes that, while the court correctly stated that mother had filed a motion to modify parental rights and responsibilities in the family division, the court failed to recognize that mother’s motion to modify had been denied because the parties were required to first engage in mediation. The family division had dismissed mother’s motion to modify, directing the parties to first attempt mediation. The Court indicated that mother could refile her motion without paying a new filing fee if she did so within sixty days. Neither party has filed a motion to modify since that time. Accordingly, at the time of the final RFA hearing, there was no motion to modify pending.

Under 15 V.S.A. § 1103(c)(1)(A), “the court shall make such orders as it deems necessary to protect the plaintiff or the children, or both, if the court finds that the defendant has abused the plaintiff, and . . . there is a danger of further abuse.” The term “abuse” includes “[a]ttempting to cause or causing physical harm” or “[p]lacing another in fear of imminent serious physical harm.” Id. § 1101(1)(A), (B).

On appeal, we view the trial court’s factual findings “in a light most favorable to the prevailing party, disregarding modifying evidence.” Mullin v. Phelps, 162 Vt. 250, 260 (1994) (citation omitted). The findings will stand unless clearly erroneous, meaning that there is no evidence to support them. Id. The court’s conclusions will stand where supported by the findings. Id.; see also McCool v. Macura, 2019 VT 85, ¶ 6, 211 Vt. 263 (explaining that Supreme Court reviews “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”) (citation omitted). “We defer to the [trial] court’s findings because that court is in a unique position to assess the credibility of witnesses and weigh the persuasiveness of the evidence.” Kasser v. Kasser, 2006 VT 2, ¶ 19, 179 Vt. 259 (citation omitted).

Father fails to show that the court’s findings are clearly erroneous. Mother testified to the events found by the court and the court deemed her testimony credible. Mother was not required to supplement her testimony with other evidence. Her testimony alone is sufficient to support the court’s findings. Mother also testified that she was afraid of father and remained afraid of

² We interpret this order to effectively award mother primary physical rights and responsibilities. Physical rights and responsibilities can be entrusted solely to one party or another, or can be shared, but is not typically divisible into percentage shares. Parent-child contact is the vehicle through which the proportion of time each parent spends with the child is typically established.

him. Father did not object to any of mother’s testimony as irrelevant and we are unpersuaded by his challenge to the court’s evaluation of mother’s credibility. The court’s findings support its decision that there was abuse and danger of further abuse. While father would have us weigh the evidence differently, we recognize that “it is the exclusive role of the trial court to assess the credibility of witnesses and weigh the evidence” and “we do not reweigh the evidence on appeal.” Peralta v. Brannan, 2020 VT 100, ¶ 21.

We thus turn to father’s remaining argument. By statute, the court is authorized to make a “temporary award of parental rights and responsibilities in accordance with the criteria in [15 V.S.A. §] 665” in its RFA order. 15 V.S.A. § 1103(c)(2)(C). It can also include an “order that the defendant immediately vacate the household and that the plaintiff be awarded sole possession of a residence.” Id. § 1103(c)(2)(B).

In this case, the court awarded mother sole possession of the parties’ shared residence and prohibited father from entering the residence for any purpose other than those specified in its order. It temporarily modified the terms of the parentage order by awarding mother physical PRR. Although the court erred in stating that mother’s motion to modify remained pending in the Family Division, it acted within its authority in temporarily modifying physical PRR. Under the existing parentage order, the parties shared physical rights and responsibilities. At the time of mother’s RFA complaint, the parties and the children lived together. Because father was required to vacate the shared home, the court recognized that as a result of its order, mother would become, at least temporarily, the children’s custodial parent. The court’s modification decision was not dependent on the existence of a pending motion to modify but rather on the factual circumstances resulting from the issuance of its RFA order. The modification of PRR is temporary only and will expire upon the expiration of this RFA order. When the RFA order expires, the preexisting orders in the parentage case, pursuant to which the parties share physical and legal rights and responsibilities would become the operative order. If father seeks relief from the parental rights and responsibilities order in the RFA case while that order is still in effect, he may file a motion to that effect in the parentage case, requesting that the Court consolidate the parentage and RFA cases.

Affirmed.

BY THE COURT:

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice