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. 2018-134

JANUARY TERM, 2019

April D. Garrett v. Stepan O. Makukhov*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 84-2-18 Cnfa
		Trial Judge: Brian K. Valentine, Acting Superior Judge, Specially Assigned

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

Defendant appeals a final relief-from-abuse order entered by the family division of the superior court. We affirm.

In February 2018, plaintiff filed a petition for relief from abuse against defendant, from whom she was divorced in September 2017. In the affidavit accompanying her petition, plaintiff alleged that during the marriage, defendant had slapped her, kicked her, and knocked her to the ground. She alleged that since the divorce, defendant had stalked her online and appeared without permission at the laboratory where she works as a doctoral student. She stated that she feared for her safety due to defendant's past verbal and physical abuse. The court granted emergency relief. In March 2018, it held a hearing at which both parties appeared and testified. Defendant requested and was provided assistance by a Russian-language interpreter. Following the hearing, the court issued a final order finding that defendant had stalked, threatened, and caused physical harm to plaintiff and that there was a danger of further abuse. The court prohibited defendant from further abusing or contacting plaintiff and ordered him to stay 300 feet away from her and her residence, workplace, and motor vehicle. The expiration date of the order is December 31, 2021. Defendant appealed.

The court was authorized to issue a protective order directing defendant to stay away from plaintiff if it found by a preponderance of evidence that defendant had stalked plaintiff. 12 V.S.A. § 5133(d). To "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 . . . fear for his or her safety" or "suffer substantial emotional distress." 12 V.S.A. § 5131(6). Because "the family court is in the unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing," this Court reviews the family court's decision to grant 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." Raynes v. Rogers, 2008 VT 52, ¶ 9, 183 Vt. 513.

Here, the court found that defendant had caused or attempted to cause physical harm to plaintiff and had placed her in imminent fear of serious physical harm. These findings are supported by the record. Plaintiff testified that defendant abused her physically and emotionally during their five-and-a-half-year marriage. She recounted a specific incident in December 2014 when defendant became frustrated while attempting to fix a broken kitchen drawer. When she tried to help him, he grabbed her by her left forearm "really hard" and threw her to the ground. She fled, returning home only after their church pastor convinced defendant to apologize. On another occasion in June 2016, defendant became angry with plaintiff for purchasing a pair of yoga pants. He demanded that she return the pants to the store. When plaintiff refused, defendant grabbed a chair and threw it across the room, breaking a television and glassware. Plaintiff ran to get her keys, and defendant grabbed her and threw her to the ground, causing plaintiff to hit her head. Plaintiff testified that at other times, defendant had slapped her on the face, kicked her underneath the table when she said something he did not approve of, and drove excessively fast and erratically to scare her. For his part, defendant explained that during the December 2014 incident plaintiff described he did not push her in the way she described; denied hitting or grabbing her during their marriage; and acknowledged pushing her, but in the context of back-and-forth in which they pushed each other.

The trial court is entitled to believe whichever witnesses or testimony it finds persuasive, and this Court cannot set aside the trial court's findings based on our own assessment of the testimony if there is evidence to support the trial court's findings. Even though defendant denies plaintiff's claims, her testimony that he committed the various acts of violence against her in the past supports the court's findings regarding physical harm.

The court also found that defendant had stalked plaintiff. This finding is likewise supported by the record. Plaintiff testified about two specific incidents. The first took place in August 2017, after the family court ordered her to let defendant into her home to inventory the marital assets. Plaintiff asked for police to be present during this visit, but no officers were available. Plaintiff told defendant that she was busy that night and that she would give him whatever he was requesting within the next few days. After defendant left, she played an online game with a friend. Within minutes of finishing the game, defendant sent her an email stating, "You told me you were busy. I hope the game was good." This frightened plaintiff, who believed that defendant was clandestinely tracking her online activity.

Then, in February 2018, defendant appeared uninvited at plaintiff's office in the University of Vermont biology building three times in one day. Plaintiff was not in her office at the time. The first time defendant appeared, her coworker recognized him and closed the office door. Defendant left, came back, and peered through the window next to the door. He then left and came back a third time. A coworker of plaintiff's escorted him away from the office. Plaintiff's Ph.D. advisor contacted the police and informed plaintiff, who was terrified. She testified that although defendant is a student at the University of Vermont, he has no legitimate business in the biology building. She also testified that after the divorce, she had asked him to only contact her through email.

Plaintiff's testimony was sufficient to support the court's finding by a preponderance of the evidence that defendant had engaged in a course of conduct directed at plaintiff that reasonably caused plaintiff to fear for her safety, in light of defendant's controlling and abusive behavior during their marriage. 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 offered innocent explanations for his actions, and argues that the family division erred by failing to consider his explanations. However, it appears that the court simply found defendant's testimony unpersuasive. "It is the province of the trial court to determine the credibility of witnesses and weigh the persuasive effect of the evidence." Bruntaeger v. Zeller, 147 Vt. 247, 252 (1986).

Defendant also argues that he was denied due process in several ways. He claims that prior to the hearing, he was shown a video explaining his rights and responsibilities but was not able to stop or rewind the video or to ask questions about its contents. He also argues that it took so long for plaintiff to testify and for the interpreter to interpret her testimony that he forgot what she said. Defendant did not raise these issues at the hearing. Accordingly, these claims were not preserved for review on appeal. LaMoria v. LaMoria, 171 Vt. 559, 562 (2000). In addition, defendant has not identified with specificity how these issues undermined the grounds for the trial court's decision. Even if we did reach these issues, we would not reverse for that reason.

Defendant also states that he had to correct the interpreter on occasion and is therefore unsure whether her interpretation as a whole was fully reliable. Defendant did not object to the interpreter's performance below and therefore failed to preserve this claim for our review. Id. Even if he had properly preserved this claim, it is so inadequately briefed that we would be unable to meaningfully address it. V.R.A.P. 28(a)(4); Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (declining to address claim that was inadequately briefed). Finally, defendant has not identified any prejudice. That is, he has not pointed to any mistranslations that caused him to give inaccurate testimony, or any mistranslations of his testimony by the interpreter that impacted the trial court's analysis.

Finally, defendant claims that the court erred by denying him the opportunity to demonstrate that it would have been physically impossible for him to push plaintiff in the way that she claimed during the December 2014 incident. Defendant testified that he was bending or squatting down in such a way that he was unable to push her in the way that she had described. He asked the court if he could demonstrate "why [he] had to push her." The court told defendant that he could demonstrate what he meant. At that moment, however, the telephone connection to the interpreter dropped. The court halted the proceeding in order to reconnect with the interpreter. When testimony resumed, the court stated that instead of defendant demonstrating how he was standing during the incident, it wanted to know whether he denied having physically grabbed or contacted plaintiff during the marriage. Defendant testified that there were incidents where he physically grabbed or had contact with plaintiff during the marriage, and that he had pushed her, but denied that he beat her up or slapped her. He testified that she had also left bruises on him on one occasion.

The trial court has discretion over whether to admit demonstrative evidence. State v. Brown, 147 Vt. 324, 328 (1986). "The erroneous admission or exclusion of evidence is grounds for reversal only if it resulted in prejudice affecting a substantial right of the party." Greene v. Bell, 171 Vt. 280, 288 (2000). Even if the proposed demonstrative evidence was admissible, defendant has failed to show that he was prejudiced by the court's decision to exclude it. Even without his physical demonstration, it was clear from defendant's testimony that he did not intend

to harm plaintiff and had an innocent explanation for the incident she described as him pushing her. A demonstration of the incident would not have had any impact.

Affirmed.

BY THE COURT:

Marilyn S. Skoglund, Associate Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice