VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 23-AP-398

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

JUNE TERM, 2024

Ann Sullivan v. John Keough* } APPEALED FROM:
} Superior Court, Windsor Unit,
} Civil Division
} CASE NO. 23-ST-01172
Trial Judge: H. Dickson Corbett

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

Defendant appeals pro se from a trial court decision granting plaintiff's request for a final anti-stalking order against him.[1] We affirm.

On October 12, 2023, plaintiff filed a pro se complaint for an order against stalking under 12 V.S.A. § 5133. She alleged that defendant, her neighbor, had written her disturbing letters, consistently directed bright and flashing lights into her windows at night, and recently admitted to filming her and her family every day.

The civil division issued a temporary order against stalking the same day and set the matter for an in-person hearing on October 20. Defendant filed a motion to continue, stating that he had a right to an attorney and needed more time to find one. The court granted defendant's request and rescheduled the matter for a remote hearing six days later. In doing so, it noted that 12 V.S.A. § 5134(b) requires that a defendant's opportunity to contest the issuance of an order against stalking be held no more than fourteen days after the temporary order was put in place—in this case, no later than the rescheduled hearing date of October 26. Defendant filed a second motion to continue prior to the rescheduled hearing, explaining that he was "still having issues trying to find a lawyer." The court denied his motion, concluding that no further continuance at defendant's request was permitted under § 5134(b).

Both parties appeared remotely and represented themselves at the hearing. After taking testimony from plaintiff and defendant, the court made the following factual findings by a preponderance of the evidence.

Plaintiff and defendant are neighbors. Over time, their relationship grew tense. Defendant became upset about a variety of events the court described as "within the incidents of ordinary rural-residential life," including plaintiff's roaming dog and the use of vehicle

[1] Plaintiff did not file an appellee's brief.

headlights and driveway floodlights at her house. He became fixated on these occurrences, which he perceived as part of conspiracy against him.

Defendant installed his own floodlight and aimed it at plaintiff's house, then installed a stronger light that repeatedly flashes the "SOS" signal in Morse code and directed it at plaintiff's bedroom window. He shined the flashing light into her window on many occasions during the night, sometimes for several hours. Plaintiff experiences this as a strobe light illuminating her bedroom and interrupting her sleep. The light has also interrupted her grandchildren's sleep. Plaintiff had to buy heavy curtains, but they do not completely eliminate the problem. Defendant admitted that he intentionally pointed the light at plaintiff's bedroom window and that he did so in retaliation for her driveway floodlights.

Defendant also developed a fixation on the routines of plaintiff's life. He kept records about when her dog is let outside, and by whom. He made comments to plaintiff to the effect that he has been surveilling her property through photographs and videos. He left numerous notes in her mailbox referencing the details of her personal life, including her husband's recent illness. The notes are strange and disturbing and have referenced the possibility that plaintiff is afflicted with a "curse." The court observed that during the hearing, defendant was oddly critical about whether plaintiff was telling the truth about her husband's illness based on his observations of the couple's patterns. All of this reflected that defendant has been monitoring plaintiff closely and to an unhealthy degree.

The combination of defendant's actions caused plaintiff to significantly modify her routines and reasonably experience substantial emotional distress, fearing that his behaviors may escalate into more violent forms of conduct.

Based on these findings, the court concluded that defendant's conduct satisfied the statutory definition of stalking and granted plaintiff's request for a final order. Among other things, the order prohibits defendant from recording plaintiff or her property or shining lights at her house. Defendant filed a timely notice of appeal.

When reviewing a final order against stalking, we will uphold the trial court's findings if supported by the evidence and its conclusions if supported by the findings. Haupt v. Langlois, 2024 VT 3, ¶ 9, __ Vt. __. Whether the court correctly interpreted the relevant statutory provisions is a question of law that we review de novo. Morton v. Young, 2023 VT 29, ¶ 10, __ Vt. __.

The civil stalking statute requires that the trial court issue an order against stalking if it finds by a preponderance of the evidence that the defendant has "stalked" the plaintiff. 12 V.S.A. § 5133(d). " '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 either "fear for his or her safety or the safety of a family member" or "suffer substantial emotional distress." Id. § 5131(6). A "course of conduct" is defined as "two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property." Id. § 5131(1)(A).

Defendant argues that the court's temporary order against stalking was unconstitutional because it issued without a hearing. See 12 V.S.A. § 5134(a) (providing that where plaintiff files complaint for temporary order against stalking supported by affidavit, court may issue order "ex parte, without notice to the defendant, upon motion and findings by the court that the defendant

has stalked . . . the plaintiff"). However, the temporary order is no longer in effect following the court's issuance of the final order. As a result, this challenge is moot and we cannot consider it.[2] Paige v. State, 2017 VT 54, ¶ 7, 205 Vt. 287 (explaining that when litigant no longer has legally cognizable interest in outcome of issue it becomes moot and courts lose jurisdiction).

Next, defendant argues that the denial of his second motion to continue the hearing deprived him of his right to counsel. "In general, there is no right to counsel . . . in civil proceedings." In re G.G., 2017 VT 10, ¶ 10, 204 Vt. 148 (citing Turner v. Rogers, 564 U.S. 431, 441-42 (2011)). Defendant acknowledges this but suggests that the right to assistance of counsel in criminal prosecutions secured by the Sixth and Fourteenth Amendments should be extended to this civil stalking proceeding because it allegedly relates to an existing or potential criminal matter. See U.S. Const. amends. VI, XIV. We do not reach this contention because defendant did not preserve it below and does not argue plain error on appeal. The lone statement in defendant's first motion to continue that having an attorney was "one of [his] rights" did not raise his current argument for extension of existing law with sufficient specificity to give the trial court a fair opportunity to rule on it. Miller-Jenkins v. Miller-Jenkins, 2010 VT 98, ¶ 28, 189 Vt. 518 (mem.) (providing that issues are preserved only where raised "with specificity and clarity" in manner that gives trial court fair opportunity to rule on them).

Defendant separately contends that the court should not have denied his motion to continue because, he asserts, other courts commonly grant second and third temporary orders in advance of a final hearing. He does not explain how he believes the court erred in interpreting § 5134(b) to conclude that it lacked discretion to reschedule the second hearing a second time at his request. See 12 V.S.A. § 5134(b) (providing that defendant's opportunity to contest order against stalking "shall be scheduled as soon as reasonably possible, which in no event shall be more than 14 days from the date of issuance of the [temporary] order"). Even assuming defendant was correct that the court could continue the hearing, his argument is unavailing. In the absence of a controlling statutory provision, motions to continue are entrusted to the discretion of the trial court, and we review only for clear abuse of that discretion. Off. of Child Support, ex rel. Stanzione v. Stanzione, 2006 VT 98, ¶ 13, 180 Vt. 629 (mem.). The fact that other courts may take a different approach does not demonstrate abuse of the trial court's broad discretion "to manage its docket[]." In re Vt. Sup. Ct. Admin. Directive No. 17, 154 Vt. 392, 402 (1990); see also, e.g., Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 20, 192 Vt. 343 (concluding that trial court did not abuse its discretion in denying plaintiff's motion to continue imminent trial because he had just hired attorney who was unavailable for those dates).

We next consider defendant's challenges to the conduct of the hearing. However, we do not reach several of these arguments because they are inadequately briefed. See In re Snyder Grp., Inc., 2020 VT 15, ¶ 26 n.10, 212 Vt. 168 (declining to address inadequately briefed argument).

Defendant contends that the court erred in denying his request for an in-person hearing. It is not clear what request or denial defendant refers to, and he does not provide a supporting record citation. See V.R.A.P. 28(a)(4) (requiring that argument in appellant's brief contain "the issues presented, how they were preserved, and . . . citations to the . . . parts of the record on

[2] Though we have recognized that final anti-stalking orders may fall within an exception to the mootness doctrine because of their potential to carry lasting consequences, we have never suggested this reasoning extends to their temporary counterparts. Hinkson v. Stevens, 2020 VT 69, ¶ 17, 213 Vt. 32.

which the appellant relies"); see also V.R.C.P. 43.1(k) (requiring that request to hold remote hearing in person be filed and served). Because defendant failed to demonstrate that he preserved this issue for appeal, it is inadequately briefed. In re Eastview at Middlebury, Inc., 2009 VT 98, ¶ 25, 187 Vt. 208 (declining to reach merits of inadequately briefed argument where appellant did not demonstrate with specific references to record that argument was preserved below).

Similarly, defendant has not provided citations demonstrating that he preserved the arguments that his hearing time was unfairly limited or that it was difficult to hear during the proceedings. See V.R.A.P. 28(a)(4). The record reflects that defendant twice affirmed he could hear in response to inquiry by the presiding judge, and declined when the court asked if he wanted to ask further questions or offer additional testimony before the conclusion of the proceeding. These arguments are also inadequately briefed. Eastview, 2009 VT 98, ¶ 25.

Finally, defendant identifies no record support for his argument that the court erroneously suggested plaintiff would prevail because she filed a complaint against defendant before he filed a complaint against her. See V.R.A.P. 28(a)(4). This argument, too, is insufficiently briefed.

Defendant also contends that the trial court erred in not permitting him to introduce his exhibits or assisting him in doing so. In its decision, the court explained that it reviewed each of defendant's prefiled exhibits and determined that they would have had no meaningful effect on the factual findings even if they had been admitted. As a result, any error defendant may assert in connection with their exclusion is necessarily harmless. See Lasek v. Vt. Vapor, Inc., 2014 VT 33, ¶ 24, 196 Vt. 243 (declining to reverse based on error that did not affect outcome of case); V.R.C.P. 61 (stating that harmless error in exclusion or admission of evidence does not require reversal). Likewise, though defendant argues that plaintiff's testimony about the specific nature of her husband's illness was hearsay and should have been excluded on this basis, the court's order notes that while both parties offered hearsay testimony without objection, the court chose not to rely on it. The court's nonspecific findings about the illness in question are consistent with this statement. As a result, even if defendant preserved this argument by objecting below, any error would be harmless because the court did not consider the testimony at issue. See V.R.C.P. 61.

We next turn to defendant's challenges to the final order. He first argues that the court erred in describing the light at plaintiff's house as typical because he offered a photograph showing that it was not a normal house light. However, the court's finding was supported by plaintiff's testimony that the light was from a camera which faces down towards her door; she and her husband sometimes turn it off before going to bed, but when they leave it on, it illuminates when an animal runs by. It was for the trial court, not this Court, to assess the credibility of this testimony and weigh the evidence. Haupt, 2024 VT 3, ¶ 9.

Defendant also contends that there was no evidence to support the finding that plaintiff experienced substantial emotional distress. Under the statute, substantial emotional distress may be evidenced by "significant modifications in the [plaintiff's] . . . routines" or fear of bodily injury. 12 V.S.A. § 5131(6)(B)(ii). Plaintiff testified that defendant's light prevented her from sleeping on multiple occasions and necessitated the purchase of window coverings, and that she was upset by defendant's escalating conduct, including shooting a handgun continuously and randomly close to their home. This testimony supported the court's findings that defendant's conduct resulted in "significant" modifications to plaintiff's routines and that she feared that his

behaviors could become violent and therefore reasonably experienced substantial emotional distress. See Haupt, 2024 VT 3, ¶ 9.

Defendant also asserts that the court erred in concluding that he stalked plaintiff because there was no evidence he engaged in threatening acts or interfered with her property. As noted above, a "course of conduct" means "two or more acts over a period of time, however short, in which a person" alternatively "follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person's property." 12 V.S.A. § 5131(1)(A) (emphasis added). Thus, any of the listed acts, if repeated, may constitute a course of conduct either in combination or in isolation. Because the court found that defendant both monitored and surveilled plaintiff on different occasions, it appropriately determined that the statutory definition was satisfied.

Defendant argues that the court's order did not comply with Federal Rule of Civil Procedure 65 because it was insufficiently specific in describing the basis on which it issued and the conduct it prohibits. These proceedings were governed by the Vermont Rules of Civil Procedure, not the Federal Rules. V.R.C.P. 1; V.R.C.P. 80.10(f) (setting forth requirements for orders against stalking). In any event, the court carefully detailed its findings and conclusions and the requirements imposed by the order are clear.

Next, defendant argues that the provisions requiring him to refrain from making video recordings of plaintiff's property or shining lights at it are unconstitutional because he has a right to defend his property by these means. He cites United States v. Hay for this proposition, but that case involves the ability of law enforcement officers to engage in warrantless surveillance of an individual's residence using a hidden camera outside the property under the Fourth Amendment. 601 F. Supp. 3d 943 (D. Kan. 2022), aff'd, 95 F.4th 1304 (10th Cir. 2024). Because it is not clear what right defendant believes was abridged here, the constitutional aspect of his argument is not adequately briefed. We have recognized that, a "stalking order may prohibit otherwise legitimate conduct if necessary to protect plaintiffs." Swett v. Gates, 2023 VT 26, ¶ 28, __ Vt. __; 12 V.S.A. § 5133(d) (quotation omitted) (providing that if court finds defendant stalked plaintiff, it "may make any . . . order it deems necessary to protect the plaintiff"). The court "certainly can, and in many cases should, proscribe . . . conduct that is not unlawful in its own right or even necessarily threatening," because even otherwise innocuous conduct "may take on very different meaning" when understood in the context of a history of stalking. Id. ¶ 29 (quotation omitted). Here, the court found that defendant's actions in monitoring and surveilling plaintiff reasonably caused her emotional distress. These findings support the court's conclusion that the challenged provisions were necessary to protect plaintiff. See 12 V.S.A. § 5133(d).

To the extent defendant suggests that the decision should be reversed based on his allegations that the court's adverse rulings evinced bias against him, a judge "is accorded a presumption of honesty and integrity," and a party alleging bias bears the burden to show otherwise in the circumstances of the case. Ball v. Melsur Corp., 161 Vt. 35, 39 (1993) (quotation omitted), overruled in part on separate grounds by Demag v. Better Power Equip., Inc., 2014 VT 78, ¶ 11, 197 Vt. 176. The mere fact that the judge may have ruled against defendant is insufficient to overcome this presumption. Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994).

Finally, we note that defendant raises several broader concerns about the Vermont State Police and the Vermont Judiciary. The latter include issues involving court staffing, remote

hearings, and alleged inconsistency between the discretionary decisions of different judges in different cases he has been involved in. To the extent defendant intends to raise arguments on this basis in his appeal, it is not clear how they relate to the order on appeal or whether they were raised below. As a result, we conclude that these arguments are also inadequately briefed and do not consider them.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice