



burden to demonstrate abuse as defined by statute despite the time that had passed since her complaint was filed. The court denied the motion.

Defendant then requested a continuance, arguing that he had received plaintiff's exhibits less than twenty-four hours earlier and needed additional time to prepare. Plaintiff's counsel responded that—as discussed on the record at the November 8 hearing—he was waiting for an attorney to enter an appearance for defendant, and, when that did not occur, he provided the evidence to defendant directly in advance of the hearing. The court denied defendant's request to continue, explaining that it was defendant's representation that he was seeking counsel that prompted plaintiff's attorney to wait to provide the requested exhibits. The court then moved forward with the evidentiary hearing.

At the conclusion of the hearing, the court found by a preponderance of the evidence that defendant had abused plaintiff by stalking her as defined in 12 V.S.A. § 5131(g) and that there was a danger of further abuse. See 15 V.S.A. §§ 1103(c)(1)(A), 1101(1)(A)(iv). It therefore issued a final RFA order. This appeal followed.

We find it necessary to address an important threshold issue before taking up defendant's arguments on appeal. In his brief, defendant cites ten decisions purportedly issued by this Court: "Baker v. Green, 171 Vt. 343 (2000)," "In re A.T., 2020 VT 7," "In re B.P., 2016 VT 117," "In re A.B., 2019 VT 5," "In re A.L.L., 2014 VT 41, 196 Vt. 594," "In re D.T., 2020 VT 52, 209 Vt. 408," "State v. Cote, 144 Vt. 70 (1983)," "State v. Hulett, 173 Vt. 392 (2002)," "State v. McDonald, 167 Vt. 206 (1997)," and "State v. Moore, 156 Vt. 123 (1991)." The citations defendant provides, however, correspond to different opinions—and, in two instances, multiple different opinions. See In re Handy, 171 Vt. 336 (2000); In re Adamski, 2020 VT 7, 211 Vt. 423 (per curiam); State v. Rondeau, 2016 VT 117, 203 Vt. 518; In re PRB No. 2018-087, 2019 VT 5, 209 Vt. 648 (mem.); In re Balivet; 2014 VT 41, 196 Vt. 425 (per curiam); Luck Bros. v. Agency of Transp., 2014 VT 59, 196 Vt. 584; Athens Sch. Dist. v. Vt. State Bd. of Educ., 2020 VT 52, 212 Vt. 455; Cornelius v. The Chronicle, Inc., 2019 VT 4, 209 Vt. 405; State v. Jacobs, 144 Vt. 70 (1984), Powers v. Off. of Child Support, 173 Vt. 390 (2002); Hixson v. Plump, 167 Vt. 202 (1997); State v. Duval, 156 Vt. 122 (1991). We are unable to identify any existing decision of this Court that defendant may have intended to reference through these citations, and we can find no source for the language defendant professes to quote from our decisions.

While self-represented litigants "receive some leeway from the courts," they are still bound by the ordinary rules of procedure, "includ[ing] the obligations of Rule 11 and sanctions for noncompliance." Zorn v. Smith, 2011 VT 10, ¶ 22, 189 Vt. 219. We remind defendant that by presenting a document to this Court, he is certifying that:

to the best of [his] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances . . . the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

V.R.C.P. 11(b)(2); see V.R.A.P. 25(d)(2). Defendant is cautioned that future conduct of this nature may result in sanctions. See V.R.A.P. 25(d)(3).

With this said, we turn to defendant's arguments on appeal. We begin with his contention that the trial court erred in denying his motion to dismiss. We review decisions on a

motion to dismiss without deference, applying the same standard as the trial court. Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420; see Forrett v. Stone, 2021 VT 17, ¶ 12, 214 Vt. 283 (explaining that motion to dismiss request to extend RFA order presented question of law subject to de novo review).

Under Vermont Rule of Civil Procedure 12(b)—applicable to this matter under Vermont Family Proceedings Rule 9(a)—a defendant may move to dismiss based on: “(1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19.” In his oral motion made before the beginning of the evidentiary hearing, defendant sought dismissal on the ground that plaintiff had not yet met her burden of proving that defendant had abused her.<sup>2</sup> This is not a basis for dismissal under Rule 12(b). *Id.*; see Colby v. Umbrella, Inc., 2008 VT 20, ¶ 13, 184 Vt. 1 (explaining that purpose of complaint “is to initiate the cause of action, not prove the merits of the plaintiff’s case” and “[a]s such, the rules . . . require the court to take the plaintiff’s allegations as true on a motion to dismiss” for failure to state claim upon which relief may be granted). Indeed, plaintiff had no obligation to prove abuse until the evidentiary hearing was held. 15 V.S.A. § 1103(b) (providing that court shall grant final RFA order “only after notice to the defendant and a hearing” at which “plaintiff shall have the burden of proving abuse by a preponderance of the evidence”). The family division did not err in denying defendant’s motion to dismiss.

Defendant also argues that the court erred in denying his motion to continue. Trial courts generally have “broad discretion to manage their dockets,” Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 20, 192 Vt. 343, and we will uphold the denial of a motion to continue absent “clear abuse” of that discretion, Off. of Child Support ex rel. Stanzone v. Stanzone, 2006 VT 98, ¶ 13, 180 Vt. 629 (mem.). At the time of defendant’s motion, the final hearing had already been continued twice—most recently at defendant’s request. The family division considered and rejected defendant’s argument that he needed more time to review plaintiff’s five exhibits, concluding that defendant’s own representation that he intended to hire an attorney caused the delay in their receipt. See Raynes v. Rogers, 2008 VT 52, ¶ 8, 183 Vt. 513 (explaining that purpose of RFA statute is “to provide prompt relief”). As the court implicitly recognized, it was appropriate for plaintiff’s attorney to proceed with caution in this regard, given his ethical obligation to avoid improper communications with a represented party under the Vermont Rules of Professional Conduct. See V.R.Pr.C. 4.2 (“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”). Defendant has not demonstrated that the court abused its discretion in denying his request for a continuance. New Eng. Phoenix Co. v. Grand Isle Veterinary Hosp., 2022 VT 10, ¶ 22, 216 Vt. 227 (explaining that abuse-of-discretion standard of review “requires a showing that the trial court has withheld its discretion entirely or that it was exercised for clearly untenable reasons or to a clearly untenable extent” (quotation omitted)).

---

<sup>2</sup> To the extent defendant now suggests that his motion to dismiss should have been granted because the allegations in plaintiff’s complaint failed to state a claim upon which relief could be granted, he did not preserve this argument for our review on appeal by raising it below. See State v. Ben-Mont Corp., 163 Vt. 53, 61 (1994) (“To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it.”).

In a related argument, defendant suggests that the court erred in admitting plaintiff's exhibits because plaintiff violated a procedural rule requiring that evidence be disclosed at least five days prior to the hearing. Although defendant appears to cite either Vermont Rule of Civil Procedure 5 or Vermont Rule for Family Proceedings 5 as the source of this requirement, neither provides that litigants must file or serve copies of proposed exhibits prior to trial. See V.R.C.P. 5; V.R.F.P. 5. Trial courts often issue pretrial orders related to the disclosure of exhibits, however, and it appears that defendant may be referring to the court's hearing notice, which provided: "You must provide a copy to the Court and, if required, send a copy to the other parties in the case of any proposed exhibits or evidence at least 5 business days before the date of your hearing." To the extent this is so, defendant has not identified any court order requiring the parties to provide copies of proposed exhibits and evidence to the other party prior to the hearing. Moreover, the instructions provided that upon a party's failure to comply with such requirement, the court "may exclude any documents not produced prior to hearing." Accordingly, whether the evidence could be admitted was in any event a matter for the court's discretion. "[T]rial courts enjoy broad discretion in the admission or exclusion of evidence, and we review those decisions for an abuse of that discretion." Beaudoin on Behalf of New Eng. Expedition Ltd. P'ship II v. Feldman, 2018 VT 83, ¶ 23, 208 Vt. 169 (quotation omitted). Defendant has not shown that the court abused its discretion in admitting plaintiff's exhibits. See New Eng. Phoenix Co., 2022 VT 10, ¶ 22.

Defendant also contends that the court erred in denying him the opportunity to pose certain questions to plaintiff on cross-examination. Vermont Rule of Evidence 611(a) allows the trial court to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation orderly and effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." As we explained in McCool v. Macura, "[t]he nature of RFA hearings unquestionably warrants caution to ensure that witnesses are not harassed." 2019 VT 85, ¶ 5 n.4, 211 Vt. 263. Therefore, we "are particularly sensitive" to a court's exercise of discretion over the mode and order of interrogating witnesses and presenting evidence "in the RFA context." Poss v. Alarie, 2023 VT 55, ¶ 20, 218 Vt. 479. Here, again, defendant has not shown an abuse of that discretion. Indeed, he fails to identify any specific question or questions he was not allowed to pose or to provide related record citations. It is the appellant's burden "to demonstrate how the lower court erred warranting reversal," and "[w]e will not comb the record searching for error." In re S.B.L., 150 Vt. 294, 297 (1988). Defendant has not met that burden here.

Defendant further asserts that plaintiff made statements during her testimony that were later proven false in a separate legal proceeding. He argues that the trial court "failed to properly address" this allegedly false testimony and, as a result, its findings were clearly erroneous. This argument is difficult to follow—including because defendant identifies neither the allegedly false statements nor the subsequent proceeding at issue. Findings are clearly erroneous only where there is no credible evidence to support them. Alberino v. Balch, 2008 VT 130, ¶ 7, 185 Vt. 589 (mem.). Though defendant now seems to suggest that newly discovered evidence undermined the credibility of plaintiff's testimony and, as a result, called the court's findings into question, he failed to present this argument to the court below by moving for reconsideration as required under the rules. See V.R.F.P. 9(a); V.R.C.P. 59(a); V.R.C.P. 60(b). Therefore, even assuming this claim is adequately briefed, it is without merit.

To the extent defendant argues that his constitutional rights were violated in connection with any of family division rulings he challenges, he has not demonstrated that he preserved such

contentions for our review by raising them below. See Ben-Mont Corp., 163 Vt. at 61; see also V.R.A.P. 28(a)(4)(A) (requiring that appellant’s brief include, among other things, “the issues presented” and “how they were preserved”); Pcolar, 2012 VT 58, ¶ 19 (holding that self-represented litigants must satisfy minimum briefing standards set forth in Rule 28(a)(4)).

We have addressed all arguments discernable in defendant’s brief and see no basis to disturb the family division’s order.

Affirmed.

BY THE COURT:

---

Harold E. Eaton, Jr., Associate Justice

---

Karen R. Carroll, Associate Justice

---

Nancy J. Waples, Associate Justice