

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 26-ST-00548

Emma Mulvaney-Stanak v. Aryeh Moskowitz

Hearing Decision

Plaintiff Mulvaney-Stanak filed a complaint for a no-stalking order against Defendant Aryeh Moskowitz. The court held a hearing on Oct. 1 and 9, 2026. Both parties have counsel.

The court scopes its decision today to mirror the narrow relief requested by plaintiff in her complaint. She reiterated that request at the hearing—she seeks a one-year extension of the court’s Jun. 12 temporary order based on defendant’s conduct. That order imposes only a six-foot stay away with no other limitations on defendant. As a result, today’s decision focuses only on whether plaintiff has proved her entitlement to that one-year final order.

For background, defendant lives in Burlington where plaintiff is mayor. Defendant made a number of attempts to engage plaintiff personally and directly on a complaint he had about someone working for a subcontractor for the city. As explained below, today’s decision focuses on a subset of those interactions, given the nature of this case.

I. Findings of Fact

The court makes the following findings of fact based on a preponderance of the credible evidence admitted at the hearing, focusing on the matters most relevant to plaintiff’s complaint.

Plaintiff took office as mayor of Burlington in April 2024. She first became aware of defendant around late spring or early fall of 2025. She had learned from staff about an individual repeatedly coming to city hall regarding a complaint that she understood staff were handling.

The parties testified about a number of their interactions. Today’s decision focuses on two.

A. January DPW Meeting

Plaintiff and defendant encountered each other in January 2026 at a Ward 5 meeting held at the Department of Public Works (DPW) building on Pine Street. Defendant attended that meeting to speak on one agenda item. Plaintiff attended to speak on another. Plaintiff encountered defendant as she exited the meeting room into the lobby. Defendant was standing in

front of the double-door exit. Plaintiff saw a neighbor, Paul Fleckenstein, whom she asked to escort her to her car.

Defendant stepped forward as plaintiff and Fleckenstein walked toward the exit. Defendant says he and Fleckenstein exchanged smiles. Fleckenstein described defendant as angry and “ramped up,” so much so that Fleckenstein felt the need to step between the parties and did so. Plaintiff perceived defendant as physically blocking the exit. Defendant continued talking aggressively to plaintiff. Fleckenstein recalled that defendant made a number of unspecified accusations against plaintiff, one after another. Plaintiff said defendant repeatedly demanded a one-on-one meeting. She replied that she needed to get home to her family. Fleckenstein recalls plaintiff saying as much and that defendant could contact her office. He did not recall defendant using any physically threatening words.

Defendant testified to these events differently. He said that during this interaction he only offered to plaintiff to forego suing the city if plaintiff signed some paperwork. Defendant insists he used a pleasant tone. Defendant’s testimony contradicts plaintiff’s and Fleckenstein’s consistent and credible accounts. The court does not credit defendant’s rendition under these circumstances. The court found Fleckenstein’s testimony credible in content and demeanor. He described himself as acquainted with plaintiff but not her friend. Cross examination elicited no bias that in the court’s view would cause Fleckenstein to testify untruthfully or misleadingly. The court credits Fleckenstein’s testimony. It corroborates plaintiff’s description of events.

Following this exchange, all three people exited the building, with plaintiff and Fleckenstein going to plaintiff’s car and defendant going to his. Plaintiff drove by defendant’s car as she left the parking lot because he had parked near the exit. She took an alternate route home, repeatedly checking to see if defendant followed her but he did not.

B. June Restaurants Incident

In mid-June, plaintiff and her executive assistant, Penny Powers, walked from city hall to a planned lunch meeting at Stone Soup. By plaintiff’s account, as she approached the front of Stone Soup, she saw defendant inside, and she kept walking. She asked Powers to go in and meet the intended lunch counterpart.

Powers, in her testimony, confirmed that she walked plaintiff to Stone Soup for the lunch meeting. Powers testified that she initially left plaintiff in the vestibule of Stone Soup and intended to walk back to city hall. Powers stated that she also noticed defendant in Stone Soup eating lunch as defendant himself testified. Both Powers and plaintiff turned around. They had a brief discussion at Pho Son next door to Stone Soup. They agreed plaintiff would go to Belleville Bakery, and Powers would return to Stone Soup to watch defendant.

Plaintiff walked three doors down to Belleville Bakery to wait out the situation. She saw defendant running or walking quickly and purposefully past the bakery, looking all around. Plaintiff’s “heart was pounding” from defendant’s behavior. Powers also saw defendant hastily gather his belongings and leave Stone Soup, heading in the direction plaintiff had gone. Powers followed and saw defendant running down College Street toward the bakery. Powers saw

defendant looking all around. Powers stood in front of the bakery but did not see plaintiff. Defendant noticed Powers and asked her if she worked as part of plaintiff's security team. She answered "no." Defendant proceeded to talk to Powers before proceeding down College Street.

Back at the bakery, plaintiff looked for a back exit to return to city hall. Finding none, she locked herself in the bathroom. She tried to communicate with staff and Powers to ensure her safety. Plaintiff stayed in the bathroom for about ten minutes. She could not reach Powers by phone or hear what was happening in the bakery. The bathroom has no windows.

Powers entered the bakery to check on plaintiff. Powers asked the owner where plaintiff was because Powers did not see her. The owner directed Powers to the bathroom.

Powers knocked and identified herself. Plaintiff looked distressed to Powers. Plaintiff opened the door briefly until Powers encouraged her to close and lock the door again. Powers had seen defendant in the bakery. Plaintiff remained locked in the bathroom another five or ten minutes until Powers returned. Powers observed defendant speaking in a frenetic manner. Powers heard the owner ask defendant to leave. Defendant continued to speak and left.

Defendant testified that he spoke with Powers and the bakery owner, sharing his background in an effort to communicate that he did not present a threat. Defendant says he left after the bakery owner asked him to do so since he did not intend to buy anything.

Powers then knocked on the bathroom again and identified herself. Plaintiff opened the door, hugged Powers and broke down crying. Powers had a radio and contacted Chocolate Thunder, a security service, to walk plaintiff and her lunch guest back to city hall.

Meanwhile, Powers kept an eye on defendant who walked toward Church Street and city hall. Powers watched defendant get into a car near City Hall Park and drive away. Powers shared that information with Chocolate Thunder by radio.

Later that day, interim Chief of Burlington Police Department Shawn Burke encountered defendant while Burke was on foot patrol downtown. Burke was familiar with defendant and had previously had several conversations with him. Around 1pm, defendant approached Burke. Defendant described how plaintiff had run from him and appeared afraid.

Burke found defendant's demeanor different from prior interactions. In particular, Burke noticed how defendant laughed in a "sinister" way after recounting his interaction with plaintiff earlier that day. Defendant testified he did laugh, but not in a sinister way, after telling Burke that the mayor seemed afraid of defendant. Burke told defendant he may have gone too far and committed a crime by placing plaintiff in fear. Defendant's demeanor immediately changed, in Burke's observation. Defendant was at a loss for words. After a pause, defendant stated that he wanted to retract what he had just told Burke.

The court observed the demeanor of plaintiff, Powers and Burke as they testified regarding the behavior of defendant on this day. The court found the demeanors of these witnesses composed and credible. Cross examination elicited some bases for possible bias,

principally that Powers and Burke both work for plaintiff and that defendant disapproves of plaintiff's job performance. None of the cross examination provides the court with reason to question its finding of these witness accounts as otherwise credible. Their accounts generally corroborated each other, even though the court sequestered them during the hearing. The court credits their accounts of this event.

The court also credits and finds generally credible the testimony of plaintiff. Where other witnesses existed, they corroborated plaintiff's description and perception of defendant's conduct. They also supported the reasonableness of her feeling in fear for her safety, given defendant's conduct. Nothing in the content or delivery of plaintiff's testimony suggests that her possible dissatisfaction with a critic of hers caused her to present untruthful testimony, exaggerate the effect of events or to enlist supporting witnesses inappropriately. Plaintiff presented as composed and factual, exhibiting at times the emotional strain resulting from defendant's conduct on her personally.

Defendant's testifying demeanor varied. At times, he presented as a calm, thoughtful and engaged citizen seeking what he deemed an appropriate response for a complaint about someone working indirectly for the city. At other times, he became agitated and argumentative, particularly on cross examination. His more volatile demeanor makes this court conclude that his account of events in this case is, on the whole, less balanced and less objective.

Where third-party witnesses existed, they generally corroborated plaintiff and contradicted defendant. As a result, the court places less weight on defendant's description of events than on that of the other witnesses.

II. Discussion

A. Overview

In general terms, Chapter 178 of Title 12 prohibits one person from stalking another. The statute defines what it means to "stalk" another and requires among other things a "course of conduct" involving "two or more acts" of proscribed behavior. 12 V.S.A. § 5131(1), (6). The alleged perpetrator must place the victim in fear of their safety or that of a family member or to suffer substantial emotional distress with other qualifications. *Id.* The court evaluates the victim's reaction from the standpoint of a "reasonable person in the victim's circumstances." *Id.* § 5131(4).

The statute excepts "[c]onstitutionally protected activity." *Id.* § 5131(1)(B). Defendant filed a Sep. 23 Memorandum of Points and Authorities on Petition and Speech (Def.'s Mem.). It asserts that "Plaintiff will not succeed in establishing that Defendant's attempts to engage her in discussion about an issue with her administration and City Hall were not constitutionally protected activity." Def.'s Mem. at 6.

Defendant's memo cites only one Vermont decision applying Vermont law. See Def.'s Mem. at 5 (citing *State v. Noll*, 2018 VT 106, 208 Vt. 474). As defendant acknowledges, *Noll* recognizes that:

The constitutionally protected activity that the statute expressly excluded from its reach included speech protected by the First Amendment. Insofar as expression may be part of the course of conduct that supports a stalking charge, it is, by definition, only that expression that is not protected by the First Amendment.

Noll, 2018 VT 106, ¶ 29. See also *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498, 69 S. Ct. 684, 688–89 (1949) (“It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now.”); *State v. Hemmingway*, 825 N.W.2d 303, 310 n.4 (Wis. Ct. App. 2012) (“Like we do, other states have upheld stalking statutes on the ground that the regulated conduct does not trigger First Amendment protection and attendant analysis under intermediate or strict constitutional scrutiny.”) (citing cases from California, Colorado, Florida, Georgia, Kansas, Maryland, Michigan, Minnesota, Montana, New York, Ohio, Oregon and South Dakota); *Bouters v. State*, 659 So. 2d 235, 237 (Fla. 1995) (“Stalking, whether by word or deed, falls outside the First Amendment’s purview.”). Cf. *Haupt v. Langlois*, 2024 VT 3, ¶ 20, 218 Vt. 605 (“Because the civil stalking statute is not derived from a common law tort, there is no basis for importing common law defenses.”).

These cases upheld the constitutionality of criminal stalking statutes which prohibited stalking behavior separate from speech protected by the First Amendment. The court finds their reasoning persuasive by analogy to this case and consistent with *Noll*. The court concludes that, under these authorities as applied to this case, § 5131 may constitutionally prohibit conduct not excepted by § 5131(1)(B) under the First Amendment.

In this case, plaintiff challenges only defendant’s “expression,” not his speech. She seeks a court order because of what he did, not what he said. The court will nevertheless assess defendant’s conduct as if the First Amendment protected it as speech, something the court assumes but does not decide for the purposes of today’s decision.¹

B. Excepted Activity

Under the First Amendment, “[w]e evaluate whether speech rises to the level of a true threat objectively—that is, ‘whether an ordinary, reasonable’ person ‘familiar with the context of the communication would interpret it as a threat of injury.’” *Noll*, 2018 VT 106, ¶ 37 (citation omitted). “The context of the speech is integral to this objective inquiry—both for statutory and constitutional purposes. Speech may or may not be objectively threatening depending on the circumstances of the parties involved” “[a]nd the threatening speech need not be explicit or

¹ The balance of defendant’s memo focuses on federal case law regarding government restrictions on speech. As noted when the court orally denied defendant’s motion for directed verdict at the close of plaintiff’s case, many of those authorities do not fit this case. E.g., Def’s Mem. at 4-5 (quoting *Kass v. City of New York*, 864 F.3d 200, 207-08 (2d Cir. 2017) (“[T]he government may apply content-neutral time, place, and manner restrictions only if they are ‘narrowly tailored to serve a significant government interest’ and if ‘ample alternative channels of communication’ are available.”)). Inasmuch as the court’s temporary order may amount to a city action brought by the mayor as plaintiff, defendant has not challenged the constitutionality of the court’s temporary order.

convey imminence.” *Id.* ¶¶ 38-39 (citations omitted). “The speaker need not intend to deliver on the threat.” *Id.* ¶ 36 (citation omitted).

1. January DPW Meeting

Following the January 2026 DPW meeting, Fleckenstein found defendant so “ramped up” that Fleckenstein inserted himself between plaintiff and defendant. Fleckenstein’s reaction corroborates plaintiff’s feeling threatened by defendant’s behavior. It establishes that “objectively” “‘an ordinary, reasonable’ person ‘familiar with the context of the communication would interpret it as a threat of injury’” under *Noll*. Both plaintiff and Fleckenstein did. This court concludes that defendant’s actions during this incident do not constitute constitutionally protected activity excepted by § 5131(1)(B).

2. June Restaurants Incident

During the unfolding incident at Stone Soup and Belleville Bakery in June, Powers found defendant’s behavior sufficiently concerning that she instructed plaintiff to re-close and re-lock the bathroom door when Powers realized that defendant had entered the bakery. Later that day, Chief Burke described defendant’s “sinister” laugh as defendant recounted how he had placed plaintiff in fear with his behavior that day. Burke also noted to defendant how defendant’s actions potentially crossed a line into criminality by putting plaintiff in fear.

Powers’s and Burke’s testimony corroborate plaintiff feeling threatened and in fear of her safety as a result of defendant’s conduct during this incident. Taken together with plaintiff’s, their testimony establishes that “an ordinary, reasonable’ person ‘familiar with the context of the communication would interpret [defendant’s conduct] as a threat of injury.’” *Noll*, 2018 VT 106, ¶ 37. Powers, Chief Burke and plaintiff all had the same interpretation of defendant’s actions that day. The court concludes that § 5131(1)(B) does not except defendant’s behavior during this incident.

For both incidents, the court emphasizes that its finding and discussion have avoided what defendant allegedly said to plaintiff during these interactions. *Noll* and the other authorities cited above have guided the court’s approach in this regard. By focusing on defendant’s “expression” and not his “speech,” to borrow *Noll*’s terms, the court concludes that no First Amendment privilege or protection extends to his conduct in these incidents.

C. Prohibited Activity

Having concluded that defendant’s conduct on these days did not amount to constitutionally protected activity excepted under § 5131(1)(B), the court must still decide whether it amounted to prohibited stalking.

Under the statute, “[a] threat need not be communicated in words” since “behavior is threatening when it communicates a threat.” *Haupt*, 2024 VT 3, ¶ 13 (citation and internal quotations omitted). The alleged perpetrator must place the victim in fear for their safety or in

substantial emotional distress, with the victim's reaction evaluated from the standpoint of a "reasonable person in the victim's circumstances." 12 V.S.A. § 5131(4), (6).

1. January DPW Meeting

As already noted, following the January 2026 DPW meeting, Fleckenstein found defendant so "ramped up" that Fleckenstein inserted himself between plaintiff and defendant. Fleckenstein's reaction corroborates plaintiff's fearing for her safety because of defendant's behavior. Fleckenstein's reaction to insert himself between the parties establishes that defendant's behavior did place a "reasonable person in the victim's circumstances" in fear of their safety. *Id.*

This court concludes that defendant's actions during this incident constituted one act in a qualifying "course of conduct" of threatening plaintiff. Regardless of what defendant may have said, the court concludes in this incident that defendant's "behavior [wa]s threatening [because] it communicate[d] a threat," *Haupt*, 2024 VT 3, ¶ 13, from the standpoint of a "reasonable person in [plaintiff's] circumstances." 12 V.S.A. § 5131(4), (6). Both Fleckenstein and plaintiff perceived defendant's conduct as threatening.

2. June Restaurants Incident

Also as noted above, during the unfolding incident at Stone Soup and Belleville Bakery in June, Powers found defendant's behavior sufficiently concerning that she instructed plaintiff to re-close and re-lock the bathroom door when Powers realized that defendant had entered the bakery. Later that day, Chief Burke described defendant's "sinister" laugh as defendant recounted how he had placed plaintiff in fear with his behavior that day. Burke also noted to defendant how defendant's actions potentially crossed a line into criminality by putting plaintiff in fear.

Powers's and Burke's testimony corroborate plaintiff feeling threatened and in fear of her safety as a result of defendant's conduct during this incident. Taken together with plaintiff's, their testimony establishes that defendant's behavior did place a "reasonable person in the victim's circumstances" in fear of their safety." *Id.* Powers, Chief Burke and plaintiff all had the same interpretation of defendant's actions that day. The court concludes in this incident that defendant's "behavior [wa]s threatening [because] it communicate[d] a threat," *Haupt*, 2024 VT 3, ¶ 13, from the standpoint of a "reasonable person in [plaintiff's] circumstances." 12 V.S.A. § 5131(4), (6). This court concludes that defendant's actions during this incident constituted a second act in a qualifying "course of conduct" of threatening plaintiff.

The reactions of Fleckenstein, Powers and Burke also corroborate that defendant should have known that they would cause a reasonable person to fear for their safety. Fleckenstein and Powers shared plaintiff's fearful reaction based on defendant's conduct. Burke's testimony indicated that defendant himself acknowledged making plaintiff afraid. Taken together, their testimony and plaintiff's establish that defendant actually knew and should have known that his conduct put plaintiff in fear for her safety.

The court concludes that defendant's conduct at the January and June incidents together constituted a prohibited "course of conduct" in which he purposefully threatened plaintiff by his actions that he knew or should have known would cause a reasonable person to fear for their safety. 12 V.S.A. § 5131(1)(A), (4), (6).

D. Other Incidents

The statute requires only "two or more acts" of prohibited conduct. 12 V.S.A. § 5131(1)(A)(i). The scope of today's order suffices. The court does not decide whether the other interactions between the parties constituted stalking prohibited by the statute. The court need not find that all of defendant's conduct violated § 5131. Cf. e.g., *Noll*, 2018 VT 106, ¶ 33 ("We agree with the trial court that the chargeable course of conduct could include acts outside the limitations period, as long as at least one act that meets the elements of the criminal stalking statute occurred within three years prior to the date defendant was charged in June 2015.").

The court could have considered the parties' other interactions as informative of plaintiff's reaction, but we have instead put them aside altogether. *Noll*, 2018 VT 106, ¶ 43 ("These grievances and statements by themselves would not be actionable as part of a course of conduct supporting a stalking charge, but they could inform the jury's understanding of the meaning of the [threat] reference."). We have done so in abundance of caution to avoid potential First Amendment implications unnecessary to reach today's decision. E.g., *id.* ¶ 46 ("The jury may not draw any of the inferences identified above" from "rude hyperbole [that] was nevertheless protected speech that did not convey a 'true threat'") (quotation omitted).

The scope of today's decision corresponds to the breadth of plaintiff's complaint that requested an extension of the existing temporary stay-away order. Compl. ¶ 6. She reiterated the same request at the hearing. She nowhere requested any abridgment of defendant's speech, only limitations on his unprotected "expression." See, e.g., *Office of Auditor of Accounts v. Office of Attorney General*, 2025 VT 36, ¶ 10, 221 Vt. 266 (outlining limits of courts' jurisdiction to "actual cases or controversies" and "live" issues over which the court can "grant effective relief" and reiterating that "we 'must exercise judicial restraint by not asserting jurisdiction over claims that are moot'") (citations omitted).

III. Order

The court will issue a final order consistent with today's decision.

As to the facts


Constance C. Ramsey
Chittenden County Assistant Judge

Electronically signed pursuant to V.R.E.F.
9(d) on October 15, 2026.


Colin Owyang
Superior Court Judge