VERMONT SUPREME COURT
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Case No. 26-AP-187

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

NOVEMBER TERM, 2026

Sarah McNulty v. Willie McNulty* } APPEALED FROM:
} Superior Court, Chittenden Unit,
} Family Division
} CASE NO. 26-FA-00955
Trial Judge: Brian Valentine, Magistrate,
Specially Assigned

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

Husband appeals a family division order granting wife a relief-from-abuse (RFA) order. On appeal, husband argues that the court abused its discretion by excluding testimony from the parties' oldest child, K.M., and husband's mother, and that wife did not prove her case by a preponderance of the evidence. We affirm.

The parties are married and have three minor children. The oldest child, K.M., was fifteen at the time of the final hearing. In April 2026, wife filed an RFA complaint on behalf of herself and the minor children. She alleged that husband sexually assaulted her, threatened to kill her, threatened to harm himself, and controlled her actions and expenses. She also alleged that he drove while intoxicated with the children in the vehicle and was emotionally coercive toward their children.[1] She indicated that his behavior was escalating, and she feared for her safety. The court granted her a temporary order.

The court held a contested hearing. At the start of the hearing husband's attorney asked to have a guardian ad litem (GAL) appointed for K.M. because husband sought to have K.M. testify. Wife agreed to appointment of a GAL, but objected to having K.M. testify, noting that husband had not moved to present the testimony of a child and K.M.'s testimony was not necessary to grant an order as to wife. Wife testified concerning husband's behavior. She described an occasion when she was naked, and husband put her in a restraining hold and would

[1] Wife subsequently filed for divorce. This RFA was not consolidated with the divorce action.

not let her go to call for help. She stated that husband told her that he would kill her if she cheated on him. She also testified that husband monitored her spending and was consuming increased amounts of alcohol, and that she was afraid. Wife stated that since the court issued the temporary order, husband had been watching her and had installed speed bumps along the road to her home, which made it more difficult for her and emergency vehicles to access her home.

Husband testified and denied sexually assaulting wife. Husband admitted that in May 2024, he held her wrists when she was attempting to call for help through a smart speaker. Husband sought to introduce testimony from his mother regarding the speed bumps that were installed on the road to the marital home and proffered that husband's mother would testify that she owned the road and they were her idea. Husband also sought to offer K.M.'s testimony to rebut wife's version of some of the events. The court dismissed the complaint as to the minor children and concluded that the testimony of husband's mother and K.M. was not necessary to resolve wife's request for an RFA order.

At the end of the hearing, the court made oral findings on the record. The court found that on one occasion husband grabbed wife's wrists and prevented her from calling for help. The court further found that since that time husband had engaged in further escalations and threats and engaged in a campaign to intimidate wife. The court found that there was both abuse and a danger of further abuse and ordered husband to stay away from wife, except as to the children's school and extracurricular activities. Husband appeals.

An RFA order may be sought by a family or household member who has been abused where there is danger of further abuse. 15 V.S.A. § 1103. In assessing whether to grant an order, the family division "is in a unique position to assess the credibility of witnesses and weigh the strength of evidence at hearing." Raynes v. Rogers, 2008 VT 52, ¶ 9, 183 Vt. 513. Therefore, we review the court's decision regarding a request for an RFA "only for an abuse of discretion, upholding its findings if supported by the evidence and its conclusions if supported by the findings." Id.

On appeal, husband first argues that the court erred in excluding the testimony of husband's mother and K.M. Husband contends that their testimony would have supported his version of events regarding the speed bumps and demonstrated wife's lack of credibility. "We accord trial courts considerable discretion in exercising control over the mode and order of interrogating witnesses and evidence presentation, and are particularly sensitive to that discretion in the RFA context." Poss v. Alarie, 2023 VT 55, ¶ 20, 218 Vt. 479.

Here, the court's decision to exclude testimony of K.M. and husband's mother was well within its discretion. As to K.M., not only did husband fail to properly move to provide the testimony of a child, he did not demonstrate what relevance K.M.'s testimony would provide to the issue of wife's request for an RFA order. See 15 V.S.A. § 594(b) (requiring appointment of attorney for minor child before minor child may be called as a witness), V.R.F.P. 7(d) (providing procedures for calling minor child as witness). Likewise, husband's mother's testimony was minimally relevant to wife's request. The court's decision rested in large part on the 2024 incident in which husband admitted that he held wife's wrists and the court found he prevented wife from calling for help. Neither husband's mother nor K.M. were present for that incident. To the extent husband's mother sought to speak about the ownership of the right-of-way, that point was not contested. Husband had ample opportunity through his own testimony to present

his view of the reasons for the speed bumps, and the court acted reasonably in precluding additional testimony on this point.

Husband next argues that wife failed to meet the burden of proof required by the statute. Husband points to the trial court's statement that it was "going to err on the side of caution here," and infers that this meant the court was not persuaded by wife's evidence by a preponderance of the evidence, but granted the order anyway. See 15 V.S.A. § 1103(b) (requiring plaintiff in RFA to prove abuse by "preponderance of the evidence"). The court's findings as a whole demonstrate that it was satisfied that wife met her burden of proof in this case. The court found that husband grabbed wife's wrists and prevented her from calling for help. This finding is supported by the record in that wife so testified and husband acknowledged that he grabbed wife's wrists.[2] The court further credited wife's testimony about husband's escalated behavior and threats since that time, finding that there was a danger of further abuse. It was up to the family division to ascertain the credibility of the witnesses, and we will not revisit that on appeal. Raynes v. Rogers, 2008 VT 52, ¶ 9.

Affirmed.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

_____
Nancy J. Waples, Associate Justice

_____
Christina E. Nolan, Associate Justice

[2] The transcript of the hearing does not provide a full rendition of wife's testimony and in many places indicates that her statements were "indiscernible." As appellant, it was husband's responsibility to order a transcript for the appeal and if it was incomplete or needed correction, to move to modify or correct the record prior to briefing. V.R.A.P. 10(b)(1), (e) (placing burden appellant to order transcript of "proceedings relevant to the issues raised" and allowing for correction of record). Having failed to correct the record, husband waives the right to raise any issue for which the corrected transcript is necessary. V.R.A.P. 10(b)(1).