ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-141

MAY TERM, 2018

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	Superior Court, Rutland Unit,
	}	Criminal Division
Raymond Bilodeau	}	
	}	DOCKET NO. 49-1-18 Rdcr

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

Defendant Raymond Bilodeau appeals from a denial of his motion to amend a condition of release imposed by the district court following his arraignment on charges the he violated an abuse prevention order. We affirm.

In January 2018, defendant was charged with four counts of violation of an abuse-prevention order. The order was issued in September 2017 and was to remain in effect until September 2018. The order stated defendant "shall not telephone, write to, e-mail, contact [complainant] in any way, or attempt to communicate directly or indirectly with her through a third party." The order did not prohibit defendant from contact with his and complainant's daughter, S.B.

Following defendant's arraignment, the criminal court released him on bail and set conditions for his release, including that he not have any contact with S.B. In February 2018, the family division issued a temporary parental rights and responsibilities stipulation and order, which permitted supervised contact between defendant and S.B. once the criminal court changed the conditions of release. The family court set a schedule for visitation "once the criminal conditions . . . are amended or changed and the final relief from abuse order . . . [is] amended or changed."

Defendant subsequently moved to amend the conditions of release regarding contact with his daughter. He asked for scheduled phone calls with his daughter and for supervised visitation, as ordered by the family division, starting the Sunday after his first anger-management counseling session. After a hearing in March 2018, the court amended the conditions of release to permit scheduled phone calls, but it denied the request regarding visitation. The court indicated that if the counseling sessions and phone calls went well over several weeks, then it would "seem . . . eminently reasonable" to grant defendant's request regarding supervised visitation.

The following month, in April 2018, defendant again requested supervised visitation. The court concluded that supervised visitation was not safe for the child at that time and denied the

request. Defendant appealed this decision. We held a telephone hearing with attorneys on May 11, 2018.

On appeal, defendant argues that the family court's visitation order should control. Defendant points out that the family court, which can appoint a guardian ad litem to protect S.B.'s interests, is better equipped than the criminal court to assess her safety and evaluate her best interests. Defendant contests that there are also greater procedural protections in a custody proceeding in family court than in a conditions-of-release hearing in criminal court. Given these facts, and the fact that the family court ordered visitation after the violation charges arose, defendant argues it is inappropriate for the criminal court to deny visitation through the conditions of release. He also points to the court's representations in the March hearing that it would be "eminently reasonable" to proceed with visitation if the counseling sessions and phone contact went well, arguing that it is now unfair and contrary to his fundamental right to raise his child for the court to deny visitation even though he has begun counseling and the phone contact has been going well.

On review, we affirm the trial court's decision if it "is supported by the proceedings below." 13 V.S.A. § 7556(c). The court may consider public safety in determining a condition of release. Id. § 7554(a)(2). The court must impose the least restrictive conditions necessary to reasonably assure protection of the public. Id. The statute authorizes several kinds of conditions, including restricting the defendant's associations. Id. § 7554(a)(2)(B). We conclude that the record supports the court's decision that supervised visitation is inappropriate at this time.

According to the police affidavit supporting defendant's charges, defendant violated the abuse-prevention order by repeatedly calling and texting complainant between September 2017 and January 2018. The affidavit also stated that while S.B. was visiting with him after his relationship with complainant ended, he took S.B. into a Verizon store where complainant's boyfriend worked and made S.B. identify the boyfriend. He then told S.B. to show him the boyfriend's house. When S.B. said she could not remember, he called her a "f---ing liar." There were also allegations that defendant repeatedly questioned S.B. about the boyfriend, and he spoke derisively about complainant's mother to S.B., which greatly upset S.B.

According to complainant's testimony at the change-of-conditions hearing in April 2018, S.B. was experiencing a great deal of anxiety related to her father. She said that when he had visited with her prior to the arrest, he had made many inappropriate statements, such as "digging for information" about complainant and talking about "putting bullets in people's heads." Their daughter was so anxious about her father that she "would bang her head off her bed frame" when going to bed at night. Complainant also pointed out that she, complainant, was not currently familiar with the people the family division had selected to supervise defendant's visits. She testified that defendant had threatened her in the past, once in front of their child, although the threat may not have been clear to the child because it was "cleverly worded." In that threat, he said the dream he had once had about garroting their neighbor was "nothing compared to what [he] thought about doing to [her]." In addition, when complainant ended their relationship, defendant went outside and started firing a gun, while their child was inside with complainant.

This record supports the court's decision. As the court observed, defendant put the child "in the focal point of the behaviors" underlying the violation charges. While the record shows the

phone calls and counseling were going well, and the court had said in March that supervised visits probably could commence if they went well, the court did not indicate that defendant was entitled to supervised visits the very next month. Instead the court emphasized a step-by-step approach over time:

> [W]e want to take one step at a time. . . . [T]he Court doesn't think one counseling session and saying okay, everything went great at one session is enough. We think there has to be a period of time where a party shows, over several weeks, that okay, things are going well. . . . If all the reports are that [defendant] is doing what he needs to do, going to his sessions, having good conversations with his daughter, it would seem that [supervised visitation] is eminently reasonable . . . .

At the time of the April hearing, defendant had attended only two counseling sessions and had one month's phone contact with his daughter. Although he had begun the first steps the court contemplated, he had not yet shown "several weeks" of successful counseling and phone contact. The court's decision to postpone the commencement of the family division's visitation schedule is fully consistent with its March decision and supported by the record. We also cannot find that the temporary restriction in defendant's visitation with his daughter, based on the court's reasonable concern for her safety, violates defendant's constitutional right to raise his child, even given the more limited procedural protections in a conditions-of-release hearing.

Regarding the family court's order, it explicitly set a visitation schedule for when defendant's no-contact order in the criminal docket was amended. Declining to amend the conditions of release at this time does not interfere with that order.

Affirmed.

FOR THE COURT:

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Paul L. Reiber, Chief Justice