No. _____

IN THE
Supreme Court of the United States

DANA ALBRECHT,

Petitioner,

v.

KATHERINE ALBRECHT,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

APPENDIX

Table of Contents

1. NH Supreme Court Order, December 16, 2021 4

2. NH trial court order, December 21, 2020 (Judge John A. Curran).....9

   Motion for Extension, December 18, 2020.....10

3. NH Supreme Court Order, June 19, 2020.....13

4. NH trial court order, January 27, 2020 (Judge Mark S. Derby).....17

5. Report of the Internal Review Committee on the Case of Lindsey Smith v. Richard Lorman, November 23, 2021.....20

6. NH Supreme Court Order, December 9, 2021, Establishing New Hampshire Domestic Violence Task Force.....60

7. List of 10 meetings of New Hampshire Domestic Violence Task Force, listing volume numbers of associated transcripts.....62

8. Minutes of 10 meetings of New Hampshire Domestic Violence Task Force, chaired by New Hampshire Supreme Court Justice Marconi.....63-83

9. Report to the New Hampshire Supreme Court on Domestic Violence Cases, March 1, 2022.....84

10. Statutes

    NH Rev Stat § 173B (2014).....145

    NH Rev Stat § 633:3-a (2015).....149

11. Order on Motion to Recuse Judge Kevin Rauseo, April 25, 2022 (Judge Kevin P. Rauseo).....151

12. NH trial court order, April 22, 2022 (Judge Kevin P. Rauseo).....163

13. NH trial court order, February 25, 2022 (Judge Kevin P. Rauseo).....169

14. NH Supreme Court Orders disbarring former judge Julie Introcaso.....181

15. NH Supreme Court Orders disbarring former judge Paul S. Moore.....186

16. Email from former judge Julie Introcaso to Petitioner, February 15, 2022.....189
17. Email from former judge Julie Introcaso to Hamblett & Kerrigan, P.C., November 29, 2018.....191
18. List of Nine NH Family Law Cases, Julie Introcaso and Kathleen Sternenberg, Conflict of Interest.....192
19. Deposition of Honorable Julie A. Introcaso, February 8, 2021.....193
20. Deposition of Honorable Mark S. Derby, January 18, 2021.....261

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2021-0192, Katherine Albrecht v. Dana Albrecht, the court on December 16, 2021, issued the following order:

Having considered the briefs, memorandum of law, and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The defendant appeals orders of the Circuit Court (DalPra, M., approved by Leonard and Chabot, JJ.), following a hearing, granting an extension of a domestic violence final order of protection to the plaintiff, see RSA 173-B:5, VI (Supp. 2021), and denying his motion for reconsideration. On appeal, the defendant raises several challenges to the trial court's orders. We vacate and remand.

One of the arguments advanced by the defendant is that he was denied due process of law under both Part I, Article 35 of the New Hampshire Constitution, and the Fourteenth Amendment to the United States Constitution, when the judicial officer who presided over this matter neither disqualified himself nor disclosed to the parties the basis for his potential disqualification. See In the Matter of Tapply & Zukatis, 162 N.H. 285 (2011); Blaisdell v. City of Rochester, 135 N.H. 589 (1992); Sup. Ct. R. 38.

In support of his argument, the defendant provided this court with a copy of a letter from the judicial officer to the New Hampshire Judicial Conduct Committee (JCC), in which the judicial officer reported that he may have violated the New Hampshire Code of Judicial Conduct during a telephonic hearing held in a separate family division proceeding involving the parties. In his letter, the judicial officer states, in part, that "[d]uring [defendant's] testimony he began speaking of issues that were not relevant to the issues to be decided-something he often did. Under my breath I uttered a comment that contained a vulgar expression: 'who the f*** cares.'" Thereafter, apparently without disclosing to the parties his comment, nor his decision to self-report it to the JCC, the judicial officer presided over the hearing in this matter, and subsequently recommended the dispositions set forth in the orders now on appeal.

The defendant states that he did not hear the judicial officer's comment during the family division hearing, and that he only learned of it after receiving a copy of the judicial officer's self-report letter pursuant to a request the defendant filed with the JCC. Accordingly, the defendant argues that because he "was ignorant of [the judicial officer's] self-report at the time [the judicial officer]

conducted the most recent [domestic violence] hearing, Defendant was not given any opportunity to file a motion for recusal."

In light of the defendant's arguments, we exercised our supervisory jurisdiction, see RSA 490:4 (2010), and remanded for the limited purpose of allowing the trial court to determine whether the judicial officer was disqualified, under the circumstances of this case, from presiding over the plaintiff's request to extend the protective order. Subsequently, the judicial officer issued an order on remand (DalPra, M., approved by Curran, J.), finding that there was no basis for his disqualification. The judicial officer reasoned, in part, that he is not biased, and explained that the remark was made in response to testimony that "was not relevant to the issues to be decided in the family case," that it "was not intended to be heard," and that he only reported it to the JCC "[o]ut of an abundance of caution." According to the judicial officer, the JCC has since dismissed the matter.

In light of the judicial officer's decision, we deemed the defendant's notice of appeal and brief to be challenging the determination that the judicial officer was not disqualified. Because the transcript of the family division hearing at which the judicial officer made his remark was not part of the record on appeal, on November 30, 2021, we ordered the additional transcript. Because the transcript did not contain the relevant remark, on December 10, 2021, we ordered the preparation of an amended transcript, which we received on December 14, 2021. Accordingly, we now review the merits of the disqualification decision with this additional information.

"It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit." N.H. CONST. pt. I, art. 35. The New Hampshire Code of Judicial Conduct requires a judge to avoid even the appearance of impropriety, to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and to disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including, but not limited to instances where the judge has a personal bias or prejudice concerning a party or a party's lawyer. Tapply, 162 N.H. at 296, 302; Blaisdell, 135 N.H. at 593; Sup. Ct. R. 38, Canons 1, 2.

"The party claiming bias must show the existence of bias, the likelihood of bias, or an appearance of such bias that the judge is unable to hold the balance between vindicating the interests of the court and the interests of a party." Tapply, 162 N.H. at 297 (quotation omitted). "The existence of an appearance of impropriety is determined by an objective standard, i.e., would a reasonable person, not the judge himself, question the impartiality of the court." Id. at 302 (quotation omitted). "The objective standard is required in the interests of ensuring justice in the individual case and maintaining public confidence in the integrity of the judicial process which depends on a belief in the impersonality of judicial decision making." Id. (quotation omitted). "The test for an appearance of

partiality is whether an objective, disinterested observer, fully informed of the facts, would entertain significant doubt that justice would be done in the case." Id. (quotation omitted).

"Judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." Id. at 297 (quotation omitted). "Opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." Id. (quotation omitted). "Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." Id. (quotation omitted). However, "it is the judge's responsibility to disclose, sua sponte, all information of any potential conflict between himself and the parties or their attorneys when his impartiality might reasonably be questioned," and his "failure to disclose to the parties the basis for his or her disqualification under [the Code of Judicial Conduct] will result in a disqualification of the judge." Blaisdell, 135 N.H. at 593-94.

Here, the transcript reflects that the judicial officer was presiding over a hearing on cross-motions to modify the parties' parenting plan. The judicial officer made his remark in response to testimony of the defendant in which the defendant described his connection with the children, and the things they used to do together before the divorce that he hasn't been able to do with them since. Specifically, the defendant testified that, before the divorce, he used to make all of the family meals for the holidays, and noted that he heard from one of the children that "last year, they did get to go out and eat at a super nice place, so I think that's -- I'm glad they got to go out to eat at a super nice place. At the same time, that's not the traditional homecooked meal that I always make that they were used to. It's just sad for me. Again, just a basic, they probably miss the traditional one too." It was during this testimony that the judicial officer whispered: "Who gives a f***?"

Although "judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge," Tapply, 162 N.H. at 297 (quotation omitted), in this case, the judicial officer's remark is unlike those at issue in Tapply. Here, the remark — which was not intended to be heard — was not made in order to admonish the defendant for unreasonable behavior. See id. at 299-300. Nor can we construe it as the judicial officer "merely fulfilling his duty as the finder of fact," id. at 300, and expressing skepticism about the defendant's claims or his credibility. See id. Rather, according to the judicial officer's self-report letter to the JCC, his remark was "made out of complete frustration," because the defendant "began speaking of issues that were not relevant to the issues to be decided-something he often did." Based upon our review of the transcript, we cannot conclude that the defendant's testimony was irrelevant, nor

so far afield as to justify such a crude remark. Although a judicial officer is not precluded from showing frustration, see id. at 299-300, here, the judicial officer's remark would cause an objective, reasonable person to question whether the judicial officer had reached the point of frustration where he, quite literally, no longer cared about the defendant's testimony, and could no longer keep an open mind and decide the case impartially. See id. at 302 ("The existence of an appearance of impropriety is determined by an objective standard, i.e., would a reasonable person, not the judge himself, question the impartiality of the court." (quotation omitted)).

Our decision is bolstered by another remark the judicial officer made later in the same family division hearing. The transcript reflects that, during the plaintiff's testimony about the maturity level of the children, counsel asked her whether the children "make wise, mature decisions in their daily lives relative to, for example, schoolwork," and whether they "help[] around the house." During this questioning, the judicial officer whispered: "Of course not, they're a bunch of morons." This additional remark further supports our determination that an objective, reasonable person would question whether the judicial officer could keep an open mind and decide the case impartially.

Under these circumstances, we conclude that it was error for the judicial officer to have presided over the hearing in this case. Accordingly, we vacate the trial court's orders, and remand for a new hearing on the extension of the protective order before a different judicial officer of the circuit court. We express no opinion as to the merits of the underlying motion to extend the protective order. However, in light of the unique circumstances of this case, the protective order shall remain in place pending the outcome of the new hearing.

Given our decision, we need not address the parties' remaining arguments. To the extent that either party requests an award of attorneys' fees with respect to this appeal, the request is denied. See Sup. Ct. R. 23.

Vacated and remanded.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

Distribution:
9th N.H. Circuit Court - Nashua Family Division, 659-2019-DV-00341
Honorable Kimberly A. Chabot
Honorable John A. Curran
Honorable Elizabeth M. Leonard
Marital Master Bruce F. DalPra
Honorable David D. King
Michael J. Fontaine, Esquire
Israel F. Piedra, Esquire
Mr. Dana Albrecht
Carolyn A. Koegler, Supreme Court
Lin Willis, Supreme Court
File

THE STATE OF NEW HAMPSHIRE
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DV/STALKING NOTICE OF DECISION

JOSEPH CAULFIELD, ESQ
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LYNDEBOROUGH NH 03082

Case Name: **In the Matter of Katherine Albrecht v. Dana Albrecht** PNO: **6591910341**
Case Number: **659-2019-DV-00341**

Please be advised that on December 21, 2020 Hon John A. Curran made the following order relative to:

☐ Petition ☐ Final Order ☒ Other Order on Initial Extension of Protective Order

☐ Notice of Interstate Enforcement and Compliance with VAWA for Use with Final Order

December 21, 2020

Sherry L Bisson

Sherry L. Bisson, Clerk of Court

(659316)

C: Dana Albrecht; Katherine Albrecht; Michael J. Fontaine, ESQ

THE STATE OF NEW HAMPSHIRE
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ORDER ON INITIAL EXTENSION OF DOMESTIC VIOLENCE OR STALKING FINAL PROTECTIVE ORDER
Pursuant to RSA 633:3-a or 173-B

Case Number: **659-2019-DV-00341** PNO: **6591910341**

Katherine Albrecht	08/17/1966	V.	Dana Albrecht	08/01/1971
Plaintiff	Plf Date of Birth		Defendant	Def Date of Birth

Pursuant to the provision of New Hampshire RSA 173-B:5, VI or RSA 633:3-a, III-c, the Plaintiff requests an initial extension of the Final Protective Order issued on December 30, 2019.

☑ The Court finds, based upon the Plaintiff's representations, that good cause exists to extend the order. Accordingly, the Final Protective Order is hereby extended to 12/30/21. The Defendant shall be given notice of Plaintiff's request and this order. If the Defendant objects to the extension, he/she shall file a written objection within 10 days of the date of the Clerk's Notice of Decision and a hearing shall be conducted within 30 days of this order. At such hearing, the Court may either reaffirm, modify or vacate this extension order. If a hearing is scheduled, both parties shall appear.

☐ The Court finds, based upon the Plaintiff's representations, that good cause does not exist and the request to extend the order is denied.

Recommended:

Date

Signature of Marital Master

Printed Name of Marital Master

So Ordered:
I hereby certify that I have read the recommendation(s) and agree that, to the extent the marital master/judicial referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the marital master/judicial referee/hearing officer.

12/21/2020
Date

Signature of Judge

John A. Curran
Printed Name of Judge

THE STATE OF NEW HAMPSHIRE
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9th Circuit – Family Division - Nashua

Katherine Albrecht v. Dana Albrecht
Docket Number: 659-2019-DV-00341

PLAINTIFF'S VERIFIED MOTION FOR EXTENSION OF DOMESTIC VIOLENCE FINAL ORDER OF PROTECTION

NOW COMES the Plaintiff, Katherine Albrecht, by and through her attorneys, Welts, White & Fontaine, P.C., and pursuant to NH RSA 173-B:5, VI requests that the Court extend the Protective Orders and, in support thereof, states as follows:

1. On December 30, 2019, this Court entered a Domestic Violence Final Order of Protection which Order will expire on December 29, 2020.

2. Mr. Albrecht has demonstrated a pattern of harassing and stalking behavior and actions that is well-documented with this Court both in pleadings and evidence and testimony presented to this Court in this domestic violence matter and in the divorce matter, *In the Matter of Dana Albrecht and Katherine Albrecht*, Docket No. 659-2016-DM-00288.

3. As such, Ms. Albrecht continues to be in fear for her safety and therefore requests a one-year extension of the Protective Order. If this Domestic Violence Protective Order is not extended as requested herein, Ms. Albrecht is convinced that Mr. Albrecht's violative behavior will not only continue but will escalate given his past well-documented behaviors toward Plaintiff and her children.

WHEREFORE, the Plaintiff, Katherine Albrecht respectfully requests that this Court:

A. Grant the Plaintiff's Verified Motion for Extension of Domestic Violence Final Order of Protection for one additional year from December 30, 2020 to December 29, 2021; and

B. Grant such other and further relief as is just and equitable.

Respectfully submitted,

Date: December 18, 2020

/s/ Katherine Minges
Katherine Minges, Respondent
By Her Attorneys,

WELTS, WHITE & FONTAINE, P.C.

Date: December 18, 2020 By:

Michael J. Fontaine, Esquire
29 Factory Street; P.O. Box 507
Nashua, NH 03061
(603) 883-0797
NH BAR ID #832

Paragraph 14 of the Twelfth Renewed & Amended Order Suspending In-Person Court Proceedings Related to N.H. Circuit Court & Restricting Public Access to Courthouses states: "All courts will accept electronic signatures on pleadings and will allow litigants' signatures to be electronically signed by attorneys and/or bail commissioners with a statement that they have communicated with the litigant who has authorized them to do so." Katherine Minges has authorized Welts, White & Fontaine, P.C. to affix her electronic signature to this document in accordance with this Supreme Court Order.

CERTIFICATE OF SERVICE

I certify that I have this day furnished the within pleading, by delivering a copy of same by email and first-class mail, postage prepaid, to Joseph Caulfield, Esq., attorney for Petitioner.

Date: December 18, 2020

Michael J. Fontaine, Esq.

MOTION GRANTED.
See Accompanying order on initial extension of DV order.
So Ordered.

John A. Curran
12/21/2020

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2020-0118, Katherine Albrecht v. Dana Albrecht, the court on June 19, 2020, issued the following order:

Having considered the brief, memorandum of law, reply brief, and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The defendant, Dana Albrecht, appeals an order of the Circuit Court (Derby, J.), following a three-day hearing, granting a domestic violence final order of protection to the plaintiff, Katherine Albrecht. See RSA 173-B:5 (Supp. 2019). The defendant raises numerous challenges to the trial court's order.

We first address the defendant's argument that he received inadequate notice of the allegations being made against him. "[T]he notice provisions within RSA 173-B:3 . . . require that a [defendant] in a civil domestic violence proceeding be supplied with the factual allegations against him in advance of the hearing on the petition." South v. McCabe, 156 N.H. 797, 799 (2008). In this case, the plaintiff attached to her domestic violence petition a typewritten, five-page, single-spaced document clearly stating the allegations supporting her petition, which formed the basis for the court's protective order. The defendant asserts that the petition contained a false allegation regarding the plaintiff's arrival time at the church where the incidents occurred. The trial court noted that there was a discrepancy as to whether the plaintiff arrived at the church before or after the defendant, but did not find this discrepancy to be material. The defendant has not identified any unnoticed allegations upon which the trial court relied. Accordingly, we conclude that the defendant received adequate notice of the allegations being made against him. See id.

We next address the defendant's argument that the trial court lacked subject matter and territorial jurisdiction because the incidents alleged in the petition occurred in Massachusetts. We have held that RSA 490-D:2, IV grants subject matter jurisdiction to the circuit court over domestic violence cases, and that RSA chapter 173-B does not incorporate the territorial jurisdiction limitations of the criminal code. Hemenway v. Hemenway, 159 N.H. 680, 684-85 (2010). Accordingly, we reject the defendant's jurisdiction arguments.

We next address the defendant's argument that the trial judge erred in stating that he had "no knowledge of the divorce case," given that the judge previously had approved recommendations from the marital master in the

divorce. See RSA 490-D:9 (Supp. 2019) (noting that the signing judge must certify that he "has read the recommendations and agrees that the marital master has applied the correct legal standard to the facts determined by the marital master."). The defendant asserts that, in this case, the judge "was influenced by unproven allegations in the divorce case." The judge explained that he could not recall any facts from the divorce given the passage of time, and that he had not presided over the hearing. Moreover, we have held that "[o]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." In the Matter of Tapply & Zukatis, 162 N.H. 285, 297 (2011) (citation omitted). The defendant has made no such showing in this case.

We next address the defendant's challenge to the sufficiency of the evidence. We review sufficiency of the evidence claims as a matter of law, and uphold the findings and rulings of the trial court unless they are lacking in evidentiary support or erroneous as a matter of law. Achille v. Achille, 167 N.H. 706, 715 (2015). "The trial court, as the trier of fact, is in the best position to assess and weigh the evidence before it." In re Deven O., 165 N.H. 685, 690 (2013). "It has the benefit of observing the parties and their witnesses, and its discretion necessarily extends to assessing the credibility and demeanor of those witnesses." Id. Thus, conflicts in testimony, witness credibility, and the weight to be assigned to testimony are matters for the trial court to resolve. Id. We view the evidence in the light most favorable to the prevailing party. Smith v. Pesa, 168 N.H. 541, 544 (2016).[1]

To obtain relief under RSA chapter 173-B, the plaintiff must show "abuse" by a preponderance of the evidence. Achille, 167 N.H. at 716. "Abuse" means the commission or attempted commission of one or more of several criminal acts constituting a credible present threat to the plaintiff's safety, including stalking as defined in RSA 633:3-a (2016). See RSA 173-B:1 (Supp. 2019). The defendant argues that the evidence was insufficient to support the court's finding that his conduct constituted stalking.

A person commits the crime of stalking if he "[p]urposely or knowingly engages in a course of conduct targeted at a specific individual, which the actor knows will place that individual in fear for his or her personal safety or the safety of a member of that individual's immediate family." RSA 633:3-a, I(b).

---

[1] We have considered the arguments in the defendant's brief and conclude that there is no need to clarify our standard of review. We reject his argument that our standard of review violates his due process rights. See Buchholz v. Waterville Estates Assoc., 156 N.H. 172, 177 (2007) ("[P]assing reference to 'due process,' without more, is not a substitute for valid constitutional argument." (Quotation omitted.)).

"Course of conduct" is defined as two or more acts over a period of time, however short, which evidences a continuity of purpose. RSA 633:3-a, II(a). A course of conduct may include "[t]hreatening the safety of the targeted person or an immediate family member," "[f]ollowing, approaching, or confronting that person, or a member of that person's family," or "[a]ppearing in close proximity to, or entering the person's residence, place of employment, school, or other place where the person can be found." RSA 633:3-a, II(a)(1)–(3).

The record shows that the plaintiff and defendant are divorced parents of four children, including two minors. The court found that the "parties' divorce and post-divorce co-parenting relationship [has been] contentious and high-conflict." The plaintiff lives with the three youngest children in California. The defendant accessed records from the youngest child's school to determine that they would be on vacation in Massachusetts in early November 2019, and he surmised that they would attend services at their former church on November 3. The defendant did not have scheduled parenting time with the children on November 3, and he is no longer a member of the church.

The defendant nevertheless appeared at the church prior to services. The plaintiff and the children were informed of the defendant's presence and tried to avoid him. When the pastor asked the defendant to leave, he refused. A church leader called the police, and when officers arrived, the defendant refused to leave until they used physical force. The defendant then remained in the church parking lot until approximately 3:30 p.m., long after the church's activities had ended, and after staff had left for the day. The plaintiff and the children left the church through another door and drove away in a rental car.

The trial court concluded that the defendant, "[b]y using his access to the children's school records to learn about the vacation, and then tracking the plaintiff and the children to [the church] on November 3, disrupting the Sunday activities by refusing polite lawful requests from [church] leadership to leave, pressing his refusal to leave right up to the point where the police began to physically drag him out of the church, and then standing in the parking lot between the church and the attendees' cars until 3:30 PM," committed the crime of stalking. The court found that the defendant appeared at the church for no legitimate or constitutionally protected purpose but rather to intimidate the plaintiff and the children. We conclude that the record supports the court's findings. See Achille, 167 N.H. at 715.

The defendant argues that the evidence was insufficient to support the court's protective order because there was no evidence of physical violence or contact of any kind. We have held, however, that "the statutory definition of 'abuse' does not require the defendant to have committed a violent act." In the Matter of McArdle & McArdle, 162 N.H. 482, 487 (2011). The court found that the defendant intended to show the plaintiff "that he will track her and the children down and try to confront them wherever they are. Once he has done

that, he will not respect lawful requests from authority figures and he will push his claims up to the point of a physical confrontation with the police." The court found that the defendant knew that his conduct would cause the plaintiff to fear for her safety and that of the parties' children. Based upon our review of the record, we conclude that the evidence was sufficient to support the court's order. See Achille, 167 N.H. at 715.

Finally, the defendant argues that the trial court violated RSA 461-A:4-a, which requires any motion for contempt or enforcement of an order regarding an approved parenting plan to be reviewed by the court within 30 days. The defendant filed his motion in the parties' divorce case, under a different docket number. The motion has no bearing on the court's issuance of a protective order. We conclude that this issue is beyond the scope of this appeal.

The defendant's remaining arguments are inadequately developed, see State v. Blackmer, 149 N.H. 47, 49 (2003), not preserved, see Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250-51 (2004), and warrant no further discussion, see Vogel v. Vogel, 137 N.H. 321, 322 (1993). We do not consider new issues raised for the first time on appeal in a reply brief. Harrington v. Metropolis Property Management Group, 162 N.H. 476, 481 (2011).

Affirmed.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

Distribution:
9th N.H. Circuit Court - Nashua Family Division, 659-2019-DV-00341
Honorable Mark S. Derby
Honorable David D. King
Mr. Dana Albrecht
Michael J. Fontaine, Esq.
Israel F. Piedra, Esq.
Carolyn A. Koegler, Supreme Court
Lin Willis, Supreme Court
File

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

Hillsborough County — 9th Circuit – Family Division – Nashua

In the Matter of Katherine Albrecht and Dana Albrecht

659-2019-DV-00341

ORDER ON POST-TRIAL MOTIONS (#28, #29)

Before the court are the defendant's two post-trial motions; (1) ex parte motion to modify (#28); and (2) motion to reconsider (#29). The court has reviewed the plaintiff's objections and all of the defendant's replications to those objections.

The ex parte motion to modify (#28) is denied for the reasons set forth in the plaintiff's objections. The court gave careful consideration to the decision to restrain the defendant from coming within 2,000 feet of the Collinsville Bible Church. The Court believes that the restriction is narrowly tailored to the unique and specific facts of this case, and is necessary to prevent future incidents of stalking by the defendant. This order is rooted in the findings of stalking and the present credible threat that the defendant poses to the plaintiff's safety, and particularly in the defendant's answers, deflections and evasive non-answers to the questioning on Pages 71-79 of the December 20, 2019 transcript. In that line of questioning, the defendant made it clear that without a specific restraining order in place, he would keep inserting himself into the plaintiff's parenting time with the children, regardless of their wishes or anything else. He believes that he did nothing wrong and gave every indication that he would do it again given the chance.

The court agrees with the plaintiff that the defendant's First Amendment argument is a wholly manufactured controversy. For starters, the court's 2,000 foot restriction is remedial in nature, only applies to the defendant and was based on the defendant's specific conduct as part of a finding of domestic violence after a trial. Beyond that, the court has carefully considered this matter and is satisfied that, in light of the defendant's testimony, there is no less restrictive means available by which to protect the plaintiff from the defendant's harassment when she visits the east coast and wants to exercise her constitutional free exercise and associational rights.

Turning to the motion to reconsider (#29), that is also denied for the reasons set forth in the plaintiff's objection. The court acknowledges that the docket in 659-2016-

DM-00288 shows that on or about June 30, 2019 the undersigned judicial officer approved the recommendation of marital Master Bruce Dalpra to deny the defendant's motion for reconsideration of a substantive May 30, 2019 order (co-signed by a different judicial officer).

More than five months later on December 9, 2019, at the beginning of the DV case, the court disclosed to the parties' counsel as they were arguing about which material from the divorce case should be reviewed as part of the DV case, that the court had no knowledge of the divorce case. The phrase "no knowledge" was shorthand for the lack of factual background that a judge would have when the judge had actually heard parts of a related case and drafted substantive orders based on those hearings. The court did not want the parties' counsel to assume that because the undersigned judicial officer's name approved recommendations on prior orders, the court had any working knowledge of the facts of the divorce case. It lacked that knowledge because anything the court would have seen in late June 2019 by reviewing and approving Master Dalpra's recommendation was long forgotten by early December.

During the domestic relations trial, both parties actually re-litigated the events on and after winter vacation 2018. The plaintiff re-litigated those matters as past incidents under RSA 173-B:1, I ("[t]he court may consider evidence of such acts, regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being"), and the defendant re-litigated those events in defense of his actions on November 3, 2019. The defendant argued that the plaintiff's alleged wrongful conduct and parental alienation over at least the last year left him desperate to see his children and with no alternative. Therefore, the court began the DV hearing with no knowledge of the facts of the divorce case, but by the end of the DV hearing, the parties had presented significant evidence of the events on and after winter vacation 2018, which led up to November 3, 2019. The final DV order was based only on the testimony and documents presented at the DV trial.

As to Paragraphs 6-21 and 26-29, the only incident the court considered for the purposes of finding abuse was the November 3, 2019 incident. The components of the stalking are set forth in detail in the narrative portion of the order. The discussion of the other incidents leading up to November 3, 2019 were considered pursuant to RSA 173-B:1, I as evidence in support of the second prong of the DV analysis, i.e., whether, notwithstanding the finding of an event of abuse, the defendant still posed a credible present threat to the plaintiff's safety. The court found that he did.

As to Paragraphs 34-43 of the motion for reconsideration, the facts supporting a criminal trespass finding (in addition to stalking) were set forth in the plaintiff's domestic violence petition, and the defendant unequivocally testified to the elements of the offence. The defendant testified that he refused to leave and remained in the church after multiple orders to leave communicated to him by authorized representatives of the church (Mr. Cooper, a lay leader, and Pastor Smith) and then the Dracut Police. Plaintiffs in their domestic violence petitions are not required to identify by name and citation which crimes in RSA 173-B:1 the defendant has committed. The defendant and the court discern it from the facts that the plaintiff pleads, and that is what happened here. Also, RSA 173-B:5, I states that the evidentiary standard is preponderance of the evidence, even though RSA 173-B:1 cites criminal acts as examples of domestic violence.

As to Paragraph 54 of the motion for reconsideration, the court's choice of the word "approached" referred to the defendant's reactive e-mail communication to the camp asking for a broad range of information that was disproportionate to the amount of time the children actually spent at the camp. If the record shows that the defendant did not *physically* approach the camp (there was testimony that an order in the divorce case prohibited him from doing so), the court so finds.

Finally, and turning to the broader issue of the plaintiff's fear, RSA 633:3-a, I contains both an objective standard (RSA 633:3-a, I(a)) and a subjective standard (RSA 633:3-a, I(b)). Therefore, even if a reasonable person at the church on November 3, 2019 would not have felt in fear of his or her safety, if the defendant knew that his conduct would cause the plaintiff or the children to be in fear of their safety, that is sufficient to constitute stalking. Regardless of whether or not that fear is the result of a mental health experience, the court finds that the plaintiff clearly knew that tracking of the plaintiff and the children to the church, refusing multiple lawful orders to leave, and then watching the church from the parking lot for the bulk of the day, would cause the petitioner to fear for her safety.

Motions denied.

January 27, 2020
Date

Signature of Judge

Mark S. Derby
Printed Name of Judge

Additional material from this filing is available in the Clerk's Office.