

APPENDIX

EXHIBIT 1

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0306, Christina DePamphilis v. Paul Maravelias, the court on September 27, 2019, issued the following order:

We treat the argument by the defendant, Paul Maravelias, that he “deserved a separate appeal this Court erroneously refused to docket” as a motion to reconsider our July 10, 2019 order stating that his June 17, 2019 notice of mandatory appeal form had been docketed as a supplement to the notice of appeal he filed on May 31, 2019. We deny his motion to reconsider our July 10, 2019 order.

Having considered the defendant’s opening and reply briefs, the memorandum of law filed by the plaintiff, Christina DePamphilis, and those portions of the record that are properly before us, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The defendant appeals orders of the Circuit Court (Leonard, J.) extending a civil stalking final order of protection in favor of the plaintiff for one year, see RSA 633:3-a, III-c (Supp. 2018), and modifying the order’s terms. We affirm.

The original protective order in this matter was issued in February 2017. We upheld that order following the defendant’s appeal of it. See DePamphilis v. Maravelias, No. 2017-0139, 2017 WL 3468651 (N.H. July 28, 2017). In June 2018, the order was extended until February 2019. The defendant appealed the extension, and we upheld it. See DePamphilis v. Maravelias, No. 2018-0483 (N.H. January 16, 2019). In our order upholding the extension, we described the defendant’s 2016 and 2017 conduct in detail. We do not repeat that description here.

In January 2019, the plaintiff moved for a five-year extension of the protective order based upon conduct in which the defendant allegedly engaged in 2018, including: (1) filing criminal complaints against the plaintiff with three municipal police departments and posting those complaints on his website; (2) posting on YouTube excerpts of video he recorded of the hearing on the first extension; (3) making disparaging comments about the plaintiff and her father on the YouTube website; (4) writing a disparaging book about the plaintiff and her father that he offers to distribute to people for free; (5) posting the plaintiff’s social media images on his website; and (6) following the plaintiff in his vehicle in October 2018 when she was driving to cheerleader practice.

Following a one-day evidentiary hearing, the trial court extended the protective order until February 2020. The defendant unsuccessfully moved for reconsideration of the extension, and this appeal followed.

At the outset, we observe that, to the extent that the defendant has attempted to challenge, in this appeal, the initial protective order or the first extension thereof, he is precluded from doing so. Both the initial protective order and the first extension thereof are final judgments. Thus, we do not consider any arguments related to the trial court's alleged errors in issuing those decisions, or our alleged errors in upholding them.

The defendant first challenges the merits of the trial court's decision to extend the protective order for a second time, until February 2020. The trial court has discretion to extend a civil stalking final order of protection if it finds "good cause" for the extension. RSA 633:3-a, III-c; see MacPherson v. Weiner, 158 N.H. 6, 9 (2008). In ruling on a motion to extend a protective order, the trial court must "review the [protective] order, and each renewal thereof and . . . grant such relief as may be necessary to provide for the safety and well-being of the plaintiff." RSA 633:3-a, III-c. Thus, we have held that good cause exists to extend a protective order when "the trial court determines that the circumstances are such that, without a protective order, the plaintiff's safety and well-being would be in jeopardy." MacPherson, 158 N.H. at 10. In applying this standard, the trial court must assess whether the current conditions are such that there is still concern for the safety and well-being of the plaintiff, and in so doing, to review the circumstances of the original petition and any violation of the protective order, taking into account any present and reasonable fear by the plaintiff. Id.

"The trial court is in the best position to view the current circumstances, as well as the defendant's prior acts, and determine whether an extension is necessary for the safety and well-being of the plaintiff." Id. at 11. We will uphold the trial court's findings and rulings unless they lack evidentiary support or are tainted by error of law, id. at 10, mindful that it is for the trial court to accept or reject, in whole or in part, whatever evidence was presented, and that our role is not to determine whether we would have ruled differently, but whether a reasonable person could have reached the same decision as the trial court based upon the same evidence, Cook v. Sullivan, 149 N.H. 774, 780 (2003); see also MacPherson, 158 N.H. at 10. We view the evidence in the light most favorable to the plaintiff. Fisher v. Minichiello, 155 N.H. 188, 190 (2007).

The trial court found that the defendant's "continued efforts at disparaging [the plaintiff] and her family by making offensive and hateful statements in public postings on the internet" demonstrate "that he continues to harbor hostility toward her and her family such that legitimate concerns for [her] safety and well-being continue to exist." The trial court's findings are supported by the plaintiff's testimony and by her exhibit 2, which was admitted

into evidence without objection. Viewing the evidence in the light most favorable to the plaintiff, we conclude that the trial court reasonably could have determined that, without a protective order, the plaintiff's safety and well-being would be in jeopardy. MacPherson, 158 N.H. at 10. Accordingly, the trial court's determination that good cause exists to extend the protective order was neither lacking in evidentiary support nor tainted by error of law, and its decision to extend the order was well within its discretion. Id.

The defendant next asserts that the trial court made insufficient factual findings because it did not specify the comments it described as "offensive and hateful." However, to support this assertion, he relies upon case law concerning the issuance of an initial civil stalking order of protection, rather than case law related to extending such an order. Contrary to his assertions, the trial court's narrative order in this case was sufficient for appellate review. The defendant's argument that the trial court's order was unconstitutional because it failed to specify the comments it described as "offensive and hateful" lacks merit and warrants no further discussion. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

The defendant next contends that the trial court violated his federal and state constitutional rights to due process because it allowed the plaintiff to introduce evidence about, and ultimately rested its decision upon, allegations that the court did not rely upon when granting her temporary relief. The defendant mistakenly assumes that, when the trial court granted his request for an evidentiary hearing, it limited the hearing's scope to the allegations upon which it relied when it granted the plaintiff temporary relief. We do not share his interpretation of either the trial court's order granting his request for an evidentiary hearing or its statements during that hearing.

The defendant next argues that the trial court erred by denying his motion to continue the evidentiary hearing. The trial court has broad discretion in managing the proceedings before it. In the Matter of Sawyer & Sawyer, 161 N.H. 11, 18 (2010). We review the trial court's denial of the defendant's request to continue the hearing under our unsustainable exercise of discretion standard. Id. Thus, we will not disturb the trial court's decision unless the defendant demonstrates that it was clearly unreasonable to the prejudice of his case. Id. Based upon our review of the record submitted on appeal, we conclude that the defendant has not met his burden.

The defendant next asserts that the trial court failed to review the original circumstances of the stalking order and erroneously denied his request to submit exhibits pertinent to those circumstances. He also contends that the trial court erroneously failed to rule upon his motion to dismiss, violated his state constitutional right to a remedy by failing to issue timely rulings, and improperly denied his request to videotape the proceedings. We conclude that

the trial court did not unsustainably exercise its discretion or act unlawfully in those regards.

The defendant next argues that the trial court's order violates his First Amendment rights because it "punish[es] [his] legitimate public discussion," "serves no governmental interest," and constitutes "viewpoint discrimination." He asserts that the trial court's order "openly favor[s] the 'viewpoint' of the Plaintiff [and] striv[es] to 'control content' of [his] speech," thus violating his First Amendment rights.

It is a long-standing rule that parties may not have review of issues that they did not raise in the trial court. Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004). It is the burden of the appealing party, here the defendant, to demonstrate that the issues he is raising on appeal were raised in the trial court. Id.; Sup. Ct. R. 16(3)(b). The trial court must have had the opportunity to consider any issues asserted on appeal; thus, any issues which could not have been presented to the trial court prior to its decision must be presented to it in a motion for reconsideration. See N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002).

The record submitted on appeal does not demonstrate that the defendant made the same First Amendment argument to the trial court that he now makes on appeal. Thus, the trial court was deprived of an opportunity to correct its alleged error, and we decline to consider the issue for the first time on appeal. See id.

We decline to address the merits of the defendant's remaining appellate arguments because he has not sufficiently developed them for our review. For instance, in a single sentence, the defendant argues that the trial court "placed [him] into an indiscriminate 'class of one' by treating him disparately compared to similarly situated individuals," thereby violating his constitutional right to equal protection. A point heading in his brief states that RSA 633:3-a, III-c is facially invalid because it is overbroad and unconstitutionally vague. However, rather than develop this argument, the defendant merely incorporates by reference statements he made at the evidentiary hearing in the trial court and certain pleadings. In another section of his brief, he incorporates by reference pages of his motion for reconsideration, but does not develop appellate arguments related to those pages.

"Judicial review is not warranted for complaints regarding adverse rulings without developed legal argument, and neither passing reference to constitutional claims nor off-hand invocations of constitutional rights without support by legal argument or authority warrants extended consideration." Appeal of Omega Entm't, 156 N.H. 282, 287 (2007). Although we recognize that the defendant was self-represented in the trial court and is self-represented on appeal, self-represented litigants are bound by the same rules

that govern parties represented by counsel. In the Matter of Birmingham & Birmingham, 154 N.H. 51, 56 (2006).

Affirmed.

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

**Eileen Fox,
Clerk**

Distribution:

10th N.H. Circuit Court - Derry District Division, 473-2016-CV-00124

Honorable Elizabeth M. Leonard

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APPENDIX

EXHIBIT 2

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0306, Christina DePamphilis v. Paul Maravelias, the court on November 8, 2019, issued the following order:

Supreme Court Rule 22(2) provides that a party filing a motion for rehearing or reconsideration shall state with particularity the points of law or fact that he claims the court has overlooked or misapprehended.

In his motion to reconsider, the defendant argues, among other assertions, that the court overlooked his “due process argument” by erroneously summarizing it. Specifically, he claims that the court “willful[ly] ignor[ed]” a “thoroughly developed due process argument” on pages 32 and 33 of his brief. On pages 32 and 33 of his brief, the defendant argued that the plaintiff’s motion to extend was insufficient pursuant to South v. McCabe, 156 N.H. 797, 798-800 (2008), and In the Matter of Aldrich & Gauthier, 156 N.H. 33, 35 (2007), because the motion did not identify specific online comments that the plaintiff claimed were offensive beyond stating that he made “disparaging comments” on YouTube. However, McCabe and Aldrich were decided under certain statutes and not under the Due Process Clauses of the State and Federal Constitutions. Moreover, McCabe and Aldrich relate to the issuance of initial protective orders. To the extent that the defendant intended to argue that the court should extend McCabe and Aldrich to motions to extend protective orders, his argument is insufficiently developed. To the extent that he intended to rely upon McCabe and Aldrich to make a constitutional argument, his argument is likewise insufficiently developed.

The defendant also argues that the court, in declining to address his First Amendment argument on the ground that he did not preserve it, overlooked a trial court pleading in which he claims that he raised the argument. He then quotes an introductory paragraph in his appellate brief and similar language in one of his trial court pleadings, and asserts that the similarity of the language establishes that the two arguments are the same.

To the contrary, on appeal, the defendant argued that the trial court engaged in “viewpoint discrimination” when it extended the civil stalking final order of protection. For instance, he asserted that the trial court “openly favor[ed]” the plaintiff’s viewpoint, ignoring what he deemed offensive and “adulat[ing] the Plaintiff’s viewpoint of ‘offensiveness.’” By contrast, in the trial court, the defendant argued that, for the trial court to have lawfully curtailed his speech, his speech had to have “evinced[d] an objective likelihood of

imminent crime or violence,” and that because his speech did not do so, the court should not have curtailed it. (Bolding and emphasis omitted.) Because the defendant’s appellate argument differed from the argument he advanced in the trial court, his appellate argument was not preserved for our review.

We have reviewed the remaining claims made in the defendant’s motion for reconsideration and conclude that no points of law or fact were overlooked or misapprehended in our decision. Accordingly, upon reconsideration, we affirm our September 27, 2019 decision and deny the relief requested in the motion.

Relief requested in motion for
reconsideration denied.

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

**Eileen Fox,
Clerk**

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