

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-128

SEPTEMBER TERM, 2002

	}	APPEALED FROM:
	}	
Raymond LaMoria	}	Rutland Family Court
	}	
v.	}	
	}	DOCKET NO. F236-5-96 RcFA
Dianne LaMoria	}	
	}	Trial Judge: Francis B.
	}	McCaffrey
	}	

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

Defendant appeals the family court's orders granting plaintiff's motion to extend an existing relief-from-abuse order and denying defendant's motion to dismiss the extended order. We affirm.

Plaintiff originally obtained a relief-from-abuse order against defendant in December 1996. The order had already been extended twice and was scheduled to expire on December 23, 2001 when plaintiff filed a December 21, 2001 motion that sought to extend the order, at least so far as it required defendant to refrain from abusing him or interfering with his liberty. The family court granted the ex parte motion on a temporary basis for up to thirty days until a hearing could be held. On December 26, 2001, defendant filed a motion in opposition to plaintiff's request to extend the order. The cover letter accompanying the motion filed by defendant's attorney stated as follows:

I have also requested to have the Relief from Abuse Issue dealt with at the same time that we have the status conference set [on visitation], January 14, at 1:00. This would save me the task of arranging a driver the second day.

Per defendant's request, a hearing on extending the relief-from-abuse order was held on January 14, 2002. Following the hearing, the court extended for another year that aspect of the order requiring defendant to refrain from abusing plaintiff or interfering with his personal liberty. Within ten working days of the extended order, defendant filed a motion to dismiss the order, arguing that the court lacked jurisdiction over the matter because a hearing had not been held within ten days of the temporary ex parte order, as required under 15 V.S.A. § 1104(b) (opportunity to contest ex parte emergency order shall be provided within ten days of its issuance). The court denied the motion to dismiss, ruling that defendant had waived the statutory ten-day time period by requesting that the hearing be held on January 14, 2002 to coincide with a scheduled conference on visitation.

On appeal, defendant argues that the family court erred or abused its discretion by ruling that she had knowingly and intelligently waived her right to have a hearing held within ten days of the ex parte order, by extending the ex parte order beyond ten days, and by granting plaintiff's request to extend the relief-from-abuse order. With respect to the first claim of error, defendant contends that she did not voluntarily and knowingly waive the right to contest the ex parte order within ten days because the family court clerk had informed her that it would be impossible for a hearing to be held on or before January 2, 2002 due to the holidays. According to defendant, because the clerk informed her that the hearing could not be held within the statutory ten-day period, she thought she might as well ask for it to be held at the same time as the conference on visitation.

We find this argument unpersuasive, if not disingenuous. We first note that the last day of the statutory ten-day period extending from the December 21, 2001 temporary order would have been Tuesday, January 8, 2002, not Wednesday, January 2, 2002, as defendant suggests. See V.R.C.P. 6(a) (when computing time period of less than eleven days prescribed by rules or statutes, intermediate Saturdays, Sundays, and legal holidays are excluded); V.R.F.P. 9(a)(1) (except as provided in this rule or by statute, Rules of Civil Procedure apply to actions to prevent abuse). Defendant would have us believe that, notwithstanding her attorney's December 26 cover letter expressing his desire to have the relief-from-abuse hearing on January 14, 2002 so that he could avoid arranging a driver for a second day, she would have preferred the hearing to be held a week or so earlier, even though the relief-from-abuse order had been in place for years. In any event, irrespective of what the court clerk may have told defendant's attorney, the fact remains that within the ten-day statutory time frame for allowing defendant to contest the ex parte order, defendant's attorney explicitly and affirmatively requested that the relief-from-abuse hearing be held, for the convenience of him and his client, on January 14, 2002, when the parties were scheduled to meet for a conference on visitation. The court did not err in finding a voluntary and knowing waiver.

Defendant's second claim of error fails for the same reason. The court may have indicated that it was willing to allow the temporary ex parte order to continue for up to thirty days, but within five days of the order, defendant waived her right to have the hearing held within ten days and requested that the hearing be held on January 14, 2002, only four working days beyond the statutory time period.

Finally, we find no merit to defendant's argument that because this latest relief-from-abuse proceeding commenced with the issuance of an ex parte order under 15 V.S.A. § 1104, the family court was precluded from granting relief absent a showing that plaintiff was in immediate danger of further abuse. Although the court temporarily extended an existing relief-from-abuse hearing under § 1104 on an emergency basis without the benefit of a response from defendant, the fact remains that plaintiff was seeking an extension of an existing order, not an initial relief-from-abuse order. Therefore, at the expedited hearing in which defendant was given an opportunity to contest the ex parte order, the issue was not whether plaintiff was in immediate danger of being abused by defendant, but rather whether the existing relief-from-abuse order should be extended, at the discretion of the court, to continue to protect plaintiff from abuse. See 15 V.S.A. § 1103(d) (court may extend relief-from-abuse order for such additional time as it deems necessary to protect plaintiff; court need not find that abuse occurred during pendency of order to extend terms of order). Here, defendant has failed to demonstrate that the court abused its discretion by extending the relief-from-abuse order for another year.

Affirmed.

BY THE COURT:

James L. Morse, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice