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

ENTRY ORDER

SUPREME COURT DOCKET NOS. 2010-062 & 2010-212

OCTOBER TERM, 2010

Fatema (Jamil) Sultana	}	APPEALED FROM:
	}	
v.	}	Chittenden Family Court
	}	
Taifoor Jamil	}	DOCKET NO. F229-4-09 Cndmd
		Trial Judge: M. Patricia Zimmerman

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

Husband Taifoor Jamil appeals pro se from the family court's final divorce order and its order denying his appeal of a child support order. We affirm.

The parties were married in June 1988. They have two children, one born in 1992 and one born in 1996. Wife filed for divorce in April 2009. In January 2010, following a hearing, the court issued its final divorce order. It found that wife was the children's primary caregiver and that the children had been residing with wife since the parties separated. Husband had no contact with the children nor had he requested such contact. Husband had not paid any child support.

The court credited wife's testimony that husband had abused her for twenty years and that the children had witnessed such abuse. Among other things, it found that husband repeatedly threatened to kill wife; he also punched her numerous times, pulled her hair, and threatened to kidnap the children. Husband also threatened to kill the children if they did not obey him. The children did not feel safe with husband, and they did not want to have any contact with him. Based on these and other findings, the court awarded wife legal and physical parental rights and responsibilities over the children. The court indicated that it would not compel the children to spend time with husband, but husband could contact the children by telephone or by letter, and he could have parenting time with the children in the presence of wife or another person. Neither party sought distribution of marital property or spousal maintenance. The court thus concluded that the parties were responsible for their own debts, and each would retain his or her own personal property. Husband appealed from this order.

As to child support, the record indicates that a default child support order dated October 30, 2007 was in place at the time of the final divorce hearing, which required husband to pay wife $240 per month. Husband had been unemployed at the time of the 2007 order, and a magistrate had imputed income to husband based on his ability to earn. The 2007 order indicated that both parties had been properly served with notice of the hearing on the matter.

Following the parties' divorce, a magistrate held another child support hearing. In a February 2010 order, the magistrate continued husband's existing $240 monthly child support

obligation. The magistrate also determined that husband had a child support debt of $4,620 and ordered husband to pay $25 per month toward the arrears.

Husband appealed from this order to the family court. He essentially challenged findings that were made in connection with the 2007 child support order. He argued that he had been living with wife until March 2009, and thus, he should not owe any child support for this period. The family court found father's challenges to the findings set forth in the 2007 child support order untimely. To the extent that the magistrate used the previously imputed level of income for husband to carry forth the $240 child support obligation, the court found that this was not error. Husband continued to be unemployed and the magistrate had the authority to impute income to a parent who was voluntarily unemployed where such unemployment was not in the children's best interest. 15 V.S.A. § 653(5)(A)(iii). The court found the magistrate's conclusion supported by the record and within his discretion. The court was unable to discern any other viable appellate issue in husband's filings. The court thus denied husband's appeal of the magistrate's child support order. Husband appealed from this order, and the appeals were consolidated for our review.

The majority of husband's arguments do not directly relate to the orders from which he appeals. Instead, husband recounts the events that led up to the parties' divorce, and he reiterates his challenges to the 2007 child support order. The events that occurred outside of the courtroom and prior to the final hearing are not before us on appeal. See In re S.B.L., 150 Vt. 294, 297 (1988) (appellant must show how the trial court erred warranting reversal, and Supreme Court will not comb the record searching for error); see also Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at proceeding below; Court cannot consider facts not in the record). Additionally, as the family court found, any challenges to the 2007 child support order are out of time. See V.R.A.P. 4 (appeal must be filed within thirty days of order below). We thus do not address any arguments related to the 2007 order.

Husband next suggests that the court erred in finding that he abused wife. We disagree. The court credited wife's testimony to this effect, and it is the role of the trial court, not this Court, to assess the credibility of witnesses and weigh the evidence. Cabot v. Cabot, 166 Vt. 485, 497 (1997). Husband also asserts that he was denied his right to speak at the final divorce hearing. He provides no record support for this assertion. See Appliance Acceptance Co. v. Stevens, 121 Vt. 484, 487 (1960) (appellant has burden to demonstrate error in challenged rulings below and must, therefore, produce a record that substantiates appellant's position). If the videotape of the hearing was unavailable, as husband argues, the rules provide a mechanism whereby the record can be reconstructed. See V.R.A.P. 10(c)–(e) (where transcript is unavailable, appellant may reconstruct a statement of the evidence or proceedings from the best available means, including the appellant's recollection, and subject to the approval of the presiding judge and review of the Supreme Court). Husband did not avail himself of this procedure, and thus fails to demonstrate any error on the part of the family court. We note that the family court's order indicates that husband was present at the final hearing as was an interpreter on his behalf.

Husband contends, generally, that the family court found against him on claims and accusations previously denied for lack of merit. Assuming husband's recitations as to past

adjudications in his favor are accurate, the family court's findings relate to dates and incidents not contradicted by husband. For example, husband asserts that abuse claims against him were rejected by the family court on April 2, 2009 and denied again on April 12, 2009, while an earlier criminal charge of domestic assault was dismissed by the criminal court on October 30, 2006. Although this criminal case was dismissed, husband concedes that a civil temporary relief from abuse order issued against him in June 2006—this is consistent with the family court's finding of abuse, based on wife's testimony in the civil divorce proceeding, in the same month and year. Two other specific incidents of abuse found by the family court, in 1998 and 2003, were not the complaints noted by husband as previously dismissed. Husband demonstrates no factual error by the family court on this point.

To the extent husband raises other arguments on appeal, we are unable to compare his claims of error to any reconstructed record. What we cannot discern, we will not address. See Johnson v. Johnson, 158 Vt. 160, 164 n.1 (1992) (Supreme Court will not consider arguments not adequately briefed).

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice