

VERMONT SUPREME COURT
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Case No. 22-AP-104

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

JANUARY TERM, 2023

Joanne Aquilino* v. Jeffrey Yrsha	}	APPEALED FROM:
	}	Superior Court, Windsor Unit,
	}	Civil Division
	}	CASE NO. 21-ST-01252
		Trial Judge: Robert P. Gerety, Jr.

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

Plaintiff appeals the denial of her complaint for an order against stalking. We affirm.

In December 2021, plaintiff filed a complaint for an order against stalking against defendant in the civil division of the superior court. The court held a final hearing over three days in January, February, and March 2022. At the conclusion of the hearing, the court made the following findings on the record.

Plaintiff hired defendant, who runs an excavation and logging business, to clear some land on her property for a planned residence and pasture. The parties agreed that defendant would work at an hourly rate. They also agreed that defendant could take firewood from the property to use in partial satisfaction of his fee at a rate of sixty-five dollars a cord. Defendant performed some work and removed some firewood. The parties then had a dispute over the amounts charged by defendant. Plaintiff told defendant that she would not pay him. Defendant removed his equipment and left the job.

The court found that there were some heated exchanges between the parties during which both were upset and raised their voices. However, it found that defendant did not expressly or impliedly threaten to physically harm plaintiff or communicate such a threat to any other person. It also found that defendant did not damage or interfere with plaintiff's property in any way. The court concluded that defendant did not engage in any behavior that would cause a reasonable person to fear for her safety or suffer substantial emotional distress, or that would constitute

following, monitoring, surveilling, or interfering with property. It therefore denied plaintiff's complaint.

On appeal, plaintiff appears to argue that the court erred in denying her complaint because the evidence showed that defendant made threatening statements about her to others and vandalized her property after she refused to pay him. To issue an anti-stalking order against a defendant, the court must find by a preponderance of the evidence that the defendant has stalked the plaintiff. 12 V.S.A. § 5133(d). Stalking means “to engage purposefully in a course of conduct directed at a specific person” that would cause a reasonable person to fear for his or her safety or suffer substantial emotional distress. *Id.* § 5131(6). A “course of conduct” is defined as “two or more acts over a period of time, however short, in which a person follows, monitors, surveils, threatens, or makes threats about another person, or interferes with another person’s property.” *Id.* § 5131(1)(A). When reviewing the trial court’s decision in an abuse-prevention action, we will affirm its findings unless they are clearly erroneous, meaning that there is no evidence to support them. Benson v. Muscari, 172 Vt. 1, 5 (2001).

The record supports the trial court’s determination that plaintiff failed to meet her burden of proving that defendant stalked her. Plaintiff presented virtually no admissible evidence tending to show that defendant threatened her, interfered with her property, or engaged in any other act that met the statutory definition of stalking. At the final hearing, she testified that her camper and fencing had been damaged and her well cap had been tampered with, and that she believed defendant did these things in retaliation for not being paid. She admitted that she was not present on the property when it was vandalized and that defendant had never threatened her directly. Rather, she said that her friend Alexi, who worked with defendant, told her that defendant had threatened to kill her and throw her in a ditch. Plaintiff called Alexi to testify, but he was unable to understand the court’s questions due to a language barrier. The court continued the hearing and arranged for a translator so that Alexi could testify. However, Alexi did not appear at the rescheduled hearing. Plaintiff called a different witness who testified that she had visited plaintiff’s property and observed damage to plaintiff’s fencing. She believed defendant was to blame based on some photographs that plaintiff showed her. The witness conceded that she had never met or spoken to defendant and had never personally observed defendant on plaintiff’s property. A third witness for plaintiff testified that he was with plaintiff during the parties’ dispute over payment in November 2021. He heard defendant tell plaintiff that defendant wanted all the logs that were on the ground and that she owed him \$5000. The witness did not hear defendant make any threats to plaintiff. Plaintiff claimed to have photographs of defendant trespassing on and vandalizing her property, but no photographs were offered or admitted at the hearing.

In sum, no witness was able to testify based on personal knowledge that defendant threatened plaintiff or interfered with her property as she alleged. The only evidence of any threats was inadmissible hearsay and therefore could not support a finding that defendant stalked plaintiff. Plaintiff’s suspicions that defendant was to blame for the vandalism were not a sufficient basis for a judgment. See Fuller v. City of Rutland, 122 Vt. 284, 289 (1961) (“Evidence which merely makes it possible for the fact in issue to be as alleged, or which raises a mere conjecture, surmise or suspicion is an insufficient foundation for a verdict.”). Because plaintiff failed to meet her burden of proving a course of conduct that constituted stalking by

defendant, the court was required to deny the complaint. See Bernasconi v. City of Barre, 2019 VT 6, ¶ 11, 209 Vt. 419 (explaining in civil action for damages that where reasonable factfinder could not find that defendant caused plaintiff harm, court must award judgment to defendant).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Karen R. Carroll, Associate Justice

Nancy J. Waples, Associate Justice