THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2008-0532, Robin DePaula v. Stephen DePaula, the court on April 14, 2009, issued the following order:

The plaintiff, Robin DePaula, appeals an order of the trial court denying her motion to extend a stalking order. She argues that the trial court erred in: (1) failing to find "good cause"; (2) failing to find an extension was necessary to provide for her safety and well-being; (3) relying upon RSA 458:16; and (4) relying upon certain findings to support its denial of the motion to extend. We vacate and remand.

We note at the outset that our rules of appellate review are clear; we do not review any issue not raised in the trial court or in the notice of appeal. State v. Blackmer, 149 N.H. 47, 48-49 (2003). Accordingly, we do not consider whether the trial court erred in excluding certain hearsay testimony, although we note that hearsay testimony is ordinarily admissible in these proceedings, see RSA 633:3-a, III-a; RSA 173-B:3, VIII, or in applying an incorrect burden of proof. We note also that, at the hearing, plaintiff's counsel appeared to concede that she was required to establish good cause by a preponderance of the evidence, stating, ". . . I'm trying to get across to you at least by a preponderance of the evidence why Ms. DePaula is so afraid of Mr. DePaula." We turn then to whether the trial court erred by failing to find good cause.

The trial court has discretion to extend a protective order; it is in the best position to assess 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. MacPherson v. Weiner, 158 N.H. 6, 11 (2008). On appeal, 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 evidential support or tainted by error of law. Id. at 10.

The original final protective order was issued in December 2006; it appears from the record before us that the order was issued pursuant to RSA 633:3-a. The plaintiff sought an extension in November 2007. After a hearing, the trial court denied her request, finding that good cause to extend the order did not exist. See RSA 633:3-a, III-c (2007).

To determine whether good cause exists, 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. Id. To do so, the trial court should review the circumstances of the original stalking petition and any violation of the order and consider any present and reasonable fear by the plaintiff. Id. Where 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, "good cause" warrants an extension. Id.

The evidence in this case included: (1) less than a month after the plaintiff filed her motion to extend the one year protective order, the defendant pled guilty to violating it; (2) the plaintiff's on-line password was changed three times through an account that the defendant attached to her account; (3) the defendant set up an account on the plaintiff's phone line and internet line that gave him access to view her records; (4) the plaintiff had previously obtained a stalking order against the defendant; and (5) the defendant had set off the plaintiff's car alarm several times. We note that the above-cited evidence was admitted at the hearing either on direct or cross examination without objection.

The defendant did not testify at the hearing. The trial court denied the request for an extension finding that the plaintiff had failed to establish by a preponderance of the evidence that good cause existed to extend the protective order. The court cited the defendant's assertion in his response to the plaintiff's motion to extend the order that there had been no history of violence during the parties' relationship and the "availability of a protective order in the parties' ongoing marital case."

RSA 633:3-a, III-c contains no requirement that a party exhaust other forms of relief before applying for an extension of a protective order; we decline to impose such a requirement in the absence of any legislative direction. Because it is unclear from its order whether the trial court would otherwise have granted the request for an extension, we vacate its order. To the extent that the trial court relied upon the defendant's assertion of the absence of violence, this may also have been error. In an order granting a previous request for a protective order, the superior court found that the defendant's behavior "announced his willingness to use physical force to reflect his displeasure with the plaintiff's statements." The order was appealed to this court and affirmed. See Robin DePaula v. Stephen DePaula, no. 2005-0571 (N.H. April 27, 2006).

For the foregoing reasons, we vacate the order of the trial court and remand so that it may further consider the evidence and conduct further proceedings as it deems appropriate.

Vacated and remanded.

DUGGAN and HICKS, JJ., concurred; GALWAY, J., retired, appointed pursuant to RSA 490:3, concurred.

Eileen Fox,
Clerk