

SUPREME COURT OF NEW HAMPSHIRE

MacPherson v. Weiner

158 N.H. 6 (2008) (N.H. 2008) · No. 2007-808 · Decided October 30, 2008

SUMMARY

The Supreme Court of New Hampshire affirmed a five-year extension of a final protective order issued under RSA 633:3-a. The court held that “good cause” for an extension is determined by considering the circumstances of the original stalking, violations of the order, and the plaintiff’s present reasonable fear concerning safety and well-being. The court also rejected the defendant’s claims that the statute’s good-cause standard was insufficiently supported by evidence or unconstitutionally vague.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Broderick, C.J.; Dalianis, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	October 30, 2008
DOCKET	2007-808
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed the Hampton District Court's order granting the plaintiff's request to extend a final stalking protective order for five years.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. Sufficiency-of-the-evidence claims are reviewed as a matter of law, and the trial court's findings and rulings are upheld unless lacking evidential support or tainted by legal error. The appellate court gives considerable weight to the trial court's credibility determinations and assessment of testimony. Constitutional vagueness challenges are subject to a strong presumption of constitutionality and a heavy burden of proof.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire.
PARTIES	Jay S. Weiner v. Rita MacPherson

TOPICS

statutory interpretation

void for vagueness

due process

appellate procedure

standard of review

PRACTICE AREAS

protective orders

stalking

statutory interpretation

constitutional law

appellate procedure

QUESTIONS PRESENTED

1. Whether the plaintiff established good cause under RSA 633:3-a, III-c to support a five-year extension of the protective order.
2. Whether the defendant's compliance with the protective order during the preceding fifteen months barred an extension as a matter of law.
3. Whether the trial court unsustainably exercised its discretion in granting the extension.
4. Whether RSA 633:3-a, III-c is void for vagueness under the Federal Constitution because it uses the term good cause without more specific standards.

HOLDINGS

1. Good cause for extending a stalking protective order exists when, considering the original stalking, violations of the protective order, and the plaintiff's present and reasonable fear, current conditions indicate that the plaintiff's safety and well-being would be in jeopardy without the order.
2. A defendant's compliance with a protective order during the period preceding the requested extension does not, as a matter of law, bar an extension.
3. The evidence supported the trial court's finding of good cause, and the trial court did not abuse its discretion by extending the protective order for five years.
4. RSA 633:3-a, III-c is not unconstitutionally vague on its face or as applied because it provides adequate notice that the court will consider the original stalking, subsequent acts, and the plaintiff's safety and well-being, and that an extension may last up to five years.

KEY QUOTATIONS

“For a showing of “good cause,” the trial court must therefore assess whether the current conditions are such that there is still a concern for the safety and well-being of the plaintiff.” (210)

“Thus, the defendant's compliance with or violation of the protective order is a factor for the trial court to consider.” (211)

“Accordingly, we find that RSA 633:3-a provides notice to a person of ordinary intelligence that, in addressing whether there is “good cause” for an extension, the court will take into account the original act and any subsequent acts.” (212)

FACTUAL BACKGROUND

The plaintiff obtained a final protective order against the defendant in September 2005. In June 2006, while the order was in effect, the defendant was observed at the plaintiff's residence and allegedly drove by the residence

multiple times; he was later convicted of violating the order. Although the defendant complied with the order during the following year, the plaintiff remained fearful and requested a five-year extension based on the prior violations and the defendant's history.

PROCEDURAL HISTORY

The plaintiff obtained a final protective order in 2005 after alleged stalking-related conduct. Following an alleged violation in June 2006, the district court extended the order for one year. In August 2007, the court granted the plaintiff's request for an additional five-year extension. After a requested hearing, the defendant appealed, challenging the sufficiency of the evidence, the interpretation of the statutory good-cause standard, the trial court's discretion, and the statute's constitutionality.

DISPOSITION

affirmed

CASES CITED

- Upton v. Town of Hopkinton, 157 N.H. 115, 118, 945 A.2d 670 (2008)
- Fisher v. Minichiello, 155 N.H. 188, 190-191, 921 A.2d 385 (2007)
- Appeal of N.H. Troopers Assoc., 145 N.H. 288, 290, 761 A.2d 486 (2000)
- In re Alexander Grant & Co., 820 F.2d 352, 356 (11th Cir. 1987)
- Curras v. Unemployment Appeals Commission, 841 So. 2d 673, 674 (Fla. Dist. Ct. App. 2003)
- 7-Eleven, Inc. v. Dar, 325 Ill. App. 3d 399, 258 Ill. Dec. 826, 757 N.E.2d 515, 522 (2001)
- Tosta v. Bullis, 156 N.H. 763, 767-768, 943 A.2d 824 (2008)
- Fillmore v. Fillmore, 147 N.H. 283, 286, 786 A.2d 849 (2001)
- State v. Hancock, 156 N.H. 301, 305, 934 A.2d 551 (2007)
- Hill v. Colorado, 530 U.S. 703, 732 (2000)
- State v. MacElman, 154 N.H. 304, 307, 910 A.2d 1267 (2006)
- Derry Sand & Gravel, Inc. v. Town of Londonderry, 121 N.H. 501, 505, 431 A.2d 139 (1981)
- State v. Miller, 964 So. 2d 911, 921 (La. 2007)
- Wray v. Folsom, 166 F. Supp. 390 (W.D. Ark. 1958)