

SUPREME COURT OF NEW HAMPSHIRE

In re McArdle

162 N.H. 482 (2011) · Decided September 22, 2011

SUMMARY

The New Hampshire Supreme Court affirmed a final domestic violence protective order issued against Patrick McArdle under RSA chapter 173-B. The court held that the trial court did not abuse its discretion by allowing the plaintiff to attest at the hearing to facts in an amended petition and by considering prior incidents of destructive behavior. The court concluded that the defendant’s conduct, including following the plaintiff while carrying an unlit propane torch, constituted criminal threatening and a credible threat to the plaintiff’s safety.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Conboy, J.; Dalianis, C.J.; Duggan, J.; Hicks, J.; Lynn, J.
JURISDICTION	New Hampshire
DECIDED	September 22, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Patrick McArdle appealed a Conway Family Division order granting Lisa McArdle a final domestic violence protective order.
STANDARD OF REVIEW	The court reviewed statutory interpretation de novo and evidentiary rulings under the unsustainable exercise of discretion standard, reversing only when the ruling was clearly untenable or unreasonable to the prejudice of a party’s case.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Patrick McArdle v. Lisa McArdle

TOPICS

- domestic violence
- family law procedure
- evidence
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- family law
- domestic violence
- evidence
- statutory interpretation
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Family Division could waive its rule requiring factual allegations supporting a motion to be verified by affidavit when the plaintiff received notice of the allegations and attested to them at the hearing.
2. Whether admitting and considering the amended allegations violated the defendant's right to advance notice.
3. Whether prior incidents were too remote in time to support a finding of abuse or a credible threat to the plaintiff's safety under RSA chapter 173-B.
4. Whether criminal threatening and a credible threat to the plaintiff's safety can establish domestic-violence abuse without proof that the defendant committed a violent act against the plaintiff.

HOLDINGS

1. The Family Division did not err by permitting the plaintiff to attest to the factual allegations in her motion to amend at the commencement of the hearing and then considering those allegations.
2. The defendant received adequate notice of the amended allegations because he received the motion the day before the hearing and the plaintiff attested to the allegations at the start of the hearing.
3. The trial court properly considered the prior incidents because the protective-order decision was based primarily on the recent June 8, 2010 confrontation, while the prior incidents were relevant to whether the defendant committed criminal threatening and posed a credible threat to the plaintiff's safety.
4. A finding of abuse under RSA chapter 173-B does not require proof that the defendant committed a violent act against the plaintiff; criminal threatening combined with a credible threat to the plaintiff's safety is sufficient.

KEY QUOTATIONS

“The purpose of RSA chapter 173-B “is to preserve and protect the safety of the family unit for all family members by entitling victims of domestic violence to immediate and effective police protection and judicial relief.”” (485)

““Upon a showing of abuse of the plaintiff by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of abuse.”” (485)

“We cannot conclude, based on this statutory language, that it was the intent of the legislature to prohibit the court from waiving the attestation requirement for the petition form under circumstances where the plaintiff later attests to the facts at the hearing on the petition.” (486)

“The statutory definition of “abuse” does not require the defendant to have committed a violent act.” (487)

FACTUAL BACKGROUND

The parties had been married for twenty-three years and were living together with their children. During a confrontation lasting more than three hours, Patrick McArdle followed Lisa McArdle from room to room while carrying an unlit propane torch and repeatedly demanding that she return papers. The trial court also considered

evidence of prior destructive conduct, including damaging a vehicle, pushing over staging at work, and breaking a window with his hand.

PROCEDURAL HISTORY

Lisa McArdle filed a domestic violence petition after an incident in which Patrick McArdle followed her through the home while carrying an unlit propane torch and demanding papers. Before the hearing, she moved to amend the petition to add allegations of prior destructive conduct. The Family Division permitted her to attest to those allegations at the commencement of the hearing, admitted and considered them, found criminal threatening and a credible threat to her safety, and granted a final protective order. The Supreme Court of New Hampshire affirmed.

DISPOSITION

affirmed

CASES CITED

- Kenison v. Dubois, 152 N.H. 448, 451 (2005)
- Dalton Hydro v. Town of Dalton, 153 N.H. 75, 78 (2005)
- State v. Forbes, 157 N.H. 570, 572 (2008)
- Walker v. Walker, 158 N.H. 602, 605 (2009)
- In the Matter of Aldrich & Gauthier, 156 N.H. 33, 34-35 (2007)
- Ossipee Auto Parts v. Ossipee Planning Board, 134 N.H. 401 (1991)
- Fillmore v. Fillmore, 147 N.H. 283, 286 (2001)