THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0268, In the Matter of Suzanne C. Schon and Kevin D. Schon, the court on June 20, 2007, issued the following order:

The respondent, Kevin D. Schon, appeals an order of the trial court finding that he abused the petitioner, Suzanne C. Schon, as defined in RSA 173-B:1, I (2002). He contends that the trial court erred in finding that he had abused the petitioner and in admitting certain hearsay evidence. We affirm.

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. Fillmore v. Fillmore, 147 N.H. 283, 284 (2001). We accord considerable weight to the trial court's judgment on witness credibility and the weight to be given testimony. Id. at 285.

We have previously held that RSA 173-B:5 requires that a trial court must make a specific finding of criminal conduct in order to issue a final restraining order against a respondent. Id. In this case, the trial court found that the respondent had committed acts that constituted reckless conduct, see RSA 631:3 (Supp. 2006), and criminal threatening, see RSA 631:4 (Supp. 2006).

RSA 631:3 provides that a person is guilty of reckless conduct "if he recklessly engages in conduct which places or may place another in danger of serious bodily injury." The extensive evidence presented to the trial court included an incident in July 2005 in which the respondent, after drinking and while in an agitated state and arguing with the petitioner about their pending divorce, withdrew a large knife from a butcher block, held it up and said to her, "[T]ake back what you said, take back your words, take them back."

Because we conclude that the evidence supported a finding that the respondent committed reckless conduct, see State v. McCabe, 145 N.H. 686, 689 (2001), and that it constituted a credible threat to the petitioner's safety, we need not consider whether the evidence also supported a finding that he committed criminal threatening. Even if we assume that the trial court erred in admitting certain hearsay evidence related to the criminal threatening, we conclude that any error was harmless. See McIntire v. Lee, 149 N.H. 160, 167 (2003).

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk