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R. H. *v.* M. S.*
(AC 45507)

Alvord, Moll and Suarez, Js.

Syllabus

The defendant appealed to this court from the judgment of the trial court granting an application for relief from abuse filed pursuant to statute (§ 46b-15) by the plaintiff, her former husband. On the same day that the plaintiff filed his application, the court issued an ex parte restraining order against the defendant and extended protection to the parties' minor children. In the plaintiff's application for relief from abuse, he did not check the box on the Judicial Branch form to request that any order issued to him also protect the parties' children, nor did his accompanying affidavit state any behaviors of the defendant directed toward the children. During the subsequent evidentiary hearing on the application, the plaintiff's mother testified that she observed the defendant parking in the area outside the plaintiff's house for approximately forty-five minutes in two different locations on the same day. The defendant did not testify nor offer the testimony of any witnesses; however, she did make an oral motion to dismiss the application, claiming that the court improperly extended the ex parte restraining order to the parties' children. The court denied her motion, stating that it was within the court's discretion to extend protection to the children notwithstanding the fact that the plaintiff did not make the specific request. The court granted the application for a civil restraining order for a period of one year on the basis that the defendant had stalked the plaintiff in person and found, inter alia, that the defendant had surveilled the plaintiff by parking her car outside the area of his home. The court noted in its memorandum of decision that it had extended the protection of the ex parte restraining order to the parties' children because the defendant's access to the children had been restricted by the dissolution judgment and that, based on that history and the type of behavior alleged, the court used its discretion to include the children within the scope of the ex parte order. *Held*:

1. The trial court abused its discretion in extending the protection of the ex parte restraining order to the children in the absence of any request that it do so or any statements that the defendant had engaged in conduct related to the children: there was nothing in the plaintiff's application warranting such additional order of protection, and for the court's order to have been appropriate for the protection of the children, it necessarily needed the support of a statement in the application materials that related to those children, particularly as the plaintiff did not check the box available on the Judicial Branch form to request such protection; moreover, where statements contained in the affidavit supporting the request for ex parte relief do not implicate the parties' children, the dissolution court is the more suitable forum for adjudicating matters relating to those children; furthermore, although the ex parte restraining order had expired, the appropriate remedy to avoid collateral consequences to the defendant was to vacate the portion of that order that extended protection to the parties' children.
2. Contrary to the defendant's claim, the trial court did not abuse its discretion in concluding that the defendant's conduct in driving near the plaintiff's house and sitting in her vehicle in two different locations over the course of a forty-five minute time period constituted an act of stalking for purposes of § 46b-15; consistent with a witness' testimony that she saw the defendant pulled over on the side of the road a couple of houses down from the plaintiff's house and later saw the defendant parked in a different spot, farther down the road and facing a different direction, the court found that the defendant had surveilled the plaintiff by parking her car outside the plaintiff's house, and no evidence was presented to the court to refute that the defendant was near the plaintiff's house or to provide a benign explanation for her presence.

Argued May 2—officially released June 27, 2023

Procedural History

Application for relief from abuse, brought to the Superior Court in the judicial district of Middlesex, where the court, *Hon. Gerard I. Adelman*, judge trial referee, granted the application and issued a restraining order, and the defendant appealed to this court. *Affirmed in part*; *vacated in part*.

M. S., self-represented, the appellant (defendant).

Opinion

PER CURIAM. The self-represented defendant, M. S., appeals from the judgment of the trial court granting the application for relief from abuse filed by the plaintiff, R. H., her former spouse, pursuant to General Statutes § 46b-15.[1] On appeal, the defendant claims that the court improperly (1) extended the protection of the ex parte restraining order to the parties' children, and (2) found that the defendant had stalked the plaintiff.[2] We agree with the defendant's first claim and, thus, we vacate the ex parte restraining order to the extent that it extended protection to the parties' children. We affirm the judgment of the trial court issuing the one year restraining order.

The record reflects the following facts and procedural history. The parties are former spouses, and their marriage was dissolved in 2019. On April 28, 2022, the plaintiff filed an application for relief from abuse pursuant to § 46b-15, seeking a civil restraining order against the defendant. On that same day, the court issued an ex parte restraining order against the defendant and scheduled a hearing for May 12, 2022. At the May 12, 2022 evidentiary hearing, documentary evidence was received. The plaintiff testified and presented the testimony of E. H., the plaintiff's mother, and one additional witness.[3] The defendant did not testify or present the testimony of any witnesses.

During the hearing, E. H. testified regarding an April 23, 2022 incident. E. H., who lives on the same road as the plaintiff, saw the defendant in her vehicle on the road where the plaintiff's home is located. E. H. testified that she was driving to the grocery store and saw the defendant, with her head down and working on her phone, pulled over on the side of the road in a black SUV a couple of houses down from the plaintiff's house. When she returned from the store forty-five minutes later, she saw the defendant parked in a different spot, farther down the road and facing a different direction, such that the defendant would have had to turn the car around. E. H. testified that, on prior occasions, she had seen the defendant "driving up the road," but not parked.

The hearing continued the next afternoon. At the close of the hearing, the court issued an oral decision, in which it granted the application for a restraining order on the basis of its finding that the defendant had stalked the plaintiff.[4] The court found, inter alia, that the defendant had surveilled the plaintiff by parking her car outside the area of his home.[5] This appeal followed.

After filing her appeal, the defendant, pursuant to Practice Book § 64-1, requested that the trial court provide a statement of its decision with respect to several of the court's rulings. In its October 13, 2022 memorandum of decision, the court set forth that it previously

had stated on the record the evidence it had found persuasive. It further stated: "The court also found that the respondent had stalked the applicant, both in person and electronically. That, the court found, was sufficient for the restraining order that was issued." Additional facts and procedural history will be set forth as necessary.

I

The defendant first claims on appeal that the court improperly extended the protection of the ex parte restraining order to the parties' children. We agree that the court abused its discretion.

The following additional facts and procedural history are necessary to our resolution of this claim. The plaintiff, in his April 28, 2022 application for relief from abuse, did not check the box to request that any order issued as to him also protect the parties' minor children. Nor did the plaintiff's affidavit accompanying his application state any behaviors of the defendant directed toward the parties' children. Nevertheless, the court, in issuing the ex parte restraining order, extended protection to the parties' children.

At the start of the May 12, 2022 evidentiary hearing on the restraining order application, the defendant raised, by way of an oral motion to dismiss, her contention that the court improperly had extended the protection of the ex parte restraining order to the parties' children. The court orally denied the motion, stating that it was within its discretion to extend protection to the children notwithstanding the fact that the plaintiff did not make that specific request.

In its October 13, 2022 memorandum of decision, the court stated that it had "noted that the defendant's access to the minor children had been quite restricted by the divorce judgment issued by the court, and others, on November 18, 2021. Based on that history and type of behavior alleged, the court used its discretion to include the children within the scope of the ex parte order." (Footnote omitted.) In a footnote, the court stated: "The parties' dissolution action is a separate and distinct legal action from this restraining order. In [that action], the court . . . awarded sole custody of the parties' minor children to the plaintiff and ordered that the defendant shall have limited access to the children."

On appeal, the defendant claims that the court abused its discretion in extending the order to protect the children on the basis of what she alleges constituted an "independent investigation [that] unduly prejudiced the court."

We first set forth our standard of review and applicable legal principles. "The standard of review in family matters is well settled. An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found

that it could not reasonably conclude as it did, based on the facts presented. . . . Likewise, [a] prayer for injunctive relief is addressed to the sound discretion of the court and the court's ruling can be reviewed only for the purpose of determining whether the decision was based on an erroneous statement of law or an abuse of discretion." (Internal quotation marks omitted.) *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 361, 190 A.3d 68 (2018).

Section 46b-15 (b) provides in relevant part: "The application [to the Superior Court for relief] shall be accompanied by an affidavit made under oath which includes a brief statement of the conditions from which relief is sought. Upon receipt of the application the court shall order that a hearing on the application be held not later than fourteen days from the date of the order . . . . The court, in its discretion, may make such orders as it deems appropriate for the protection of the applicant and such dependent children or other persons as the court sees fit. In making such orders ex parte, the court, in its discretion, may consider relevant court records if the records are available to the public from a clerk of the Superior Court or on the Judicial Branch's Internet web site. . . ." Connecticut Judicial Branch Form JD-FM-137, entitled "Application for Relief from Abuse," provides the applicant the opportunity to request ex parte relief if the applicant "believe[s] there is an immediate and present physical danger to [him] and/or [his] minor children and/or animals owned or kept by [him]."

In the present case, we are convinced that the court improperly extended the protection of the ex parte restraining order to the parties' children in the absence of any request that it do so or any statements that the defendant had engaged in any conduct related to the children. In other words, the court's order was not "appropriate for the protection of the . . . children" pursuant to § 46b-15 (b) because there was nothing in the plaintiff's application warranting such additional order of protection. See *Margarita O.* v. *Fernando I.*, 189 Conn. App. 448, 468, 207 A.3d 548 (reversing order requiring defendant to stay 100 yards away from plaintiff with exception for when both children are present, and noting, among other considerations, that there was nothing in application or evidence presented at hearing to support such order and plaintiff did not request that restraining order extend to parties' children), cert. denied, 331 Conn. 930, 207 A.3d 1051, cert. denied, U.S. 140 S. Ct. 72, 205 L. Ed. 2d 130 (2019). There must be an evidentiary basis to support the issuance of a restraining order. See *Jordan M.* v. *Darric M.*, 168 Conn. App. 314, 319, 146 A.3d 1041 (2016) (concluding that court improperly granted restraining order because there was no evidence from which court could find that defendant's behavior satisfied elements of § 46b-15), cert. denied, 324 Conn. 902, 151 A.3d 1287 (2016); *Gail*

R. v. *Bubbico*, 114 Conn. App. 43, 47, 968 A.2d 464 (2009) (reversing judgment where record did not reflect factual basis to support court's decision granting restraining order); see also *S. B-R.* v. *J. D.*, 208 Conn. App. 342, 351, 266 A.3d 148 (2021) (reversing order of civil protection because of insufficient evidence as to one element of General Statutes § 46b-16a); *Fiona C.* v. *Kevin L.*, 166 Conn. App. 844, 854–55, 143 A.3d 604 (2016) (reversing judgment granting order of protection because there was insufficient evidence for court's finding regarding element of stalking, one of underlying predicate offenses set forth in § 46b-16a (a)). Just as a court may be found to have abused its discretion in issuing a restraining order following a hearing, where the factual basis to support the order is absent, a court may abuse its discretion in issuing an ex parte restraining order where the application materials, including the affidavit, are devoid of a factual basis to support the order. For the court's order to have been "appropriate for the protection [of the minor children]" in the present case, it necessarily needed the support of a statement in the application materials that related to those children, particularly because this plaintiff did not check the box available on the judicial form to request "that the order protect [his] minor children." Connecticut Judicial Branch Form JD-FM-137.

We are cognizant that § 46b-15 (b) permits the court to consider relevant court records in its review of an application for ex parte relief. We are convinced, however, that the court's reliance on such records in the present case as the sole basis on which it extended protection to the children was improper. We note that "[t]he legislature promulgated § 46b-15 to provide an expeditious means of relief for abuse victims. . . . It is not a statute to provide a remedy in every custody and visitation dispute . . . ." (Internal quotation marks omitted.) *Jordan M.* v. *Darric M.*, supra, 168 Conn. App. 320. Where the statements contained in the affidavit supporting the request for ex parte relief do not implicate the parties' children, the dissolution court is the more suitable forum for adjudicating matters related to those children.

We therefore conclude that the court abused its discretion in extending the protection of the ex parte restraining order to the children. Despite the expiration of the ex parte restraining order; see footnote 4 of this opinion; we conclude that the appropriate remedy to avoid collateral consequences to the defendant is to vacate the ex parte restraining order to the extent that it extended protection to the parties' children. See *Harley* v. *Indian Spring Land Co.*, 123 Conn. App. 800, 832–33, 3 A.3d 992 (2010).

II

The defendant next claims that the court improperly found that the defendant had stalked the plaintiff.[6] We

are not persuaded.

"An appellate court will not disturb a trial court's orders in domestic relations cases unless the court has abused its discretion or it is found that it could not reasonably conclude as it did, based on the facts presented. . . . In determining whether a trial court has abused its broad discretion in domestic relations matters, we allow every reasonable presumption in favor of the correctness of its action. . . . Appellate review of a trial court's findings of fact is governed by the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Additionally, as we often have noted, [w]e do not retry the facts or evaluate the credibility of witnesses. . . . Rather, [i]n pursuit of its fact-finding function, [i]t is within the province of the trial court . . . to weigh the evidence presented and determine the credibility and effect to be given the evidence." (Citations omitted; internal quotation marks omitted.) *D. S.* v. *R. S.*, 199 Conn. App. 11, 17–18, 234 A.3d 1150 (2020).

Pursuant to § 46b-15 (a), "[a]ny family or household member . . . who is the victim of domestic violence, as defined in section 46b-1, by another family or household member may make an application to the Superior Court for relief under this section. . . ." General Statutes § 46b-1 (b) defines "domestic violence" in relevant part as "(2) stalking, including, but not limited to, stalking as described in section 53a-181d,[7] of such family or household member . . . ." (Footnote added.)

The definition of stalking in § 46b-15 is not limited to, but, rather, is broader than, the definition of stalking provided in General Statutes § 53a-181d. Section 46b-15 does not "define the ambit of this broader definition and, therefore, we look to commonly approved usage as expressed in dictionaries." See *K. D.* v. *D. D.*, 214 Conn. App. 821, 828, 282 A.3d 528 (2022). This court previously looked to the commonly approved usage of the word stalking in *Princess Q. H.* v. *Robert H.*, 150 Conn. App. 105, 89 A.3d 896 (2014), and interpreted the statute in accordance with commonly accepted definitions of stalking, including " '[t]he act or an instance of following another by stealth. . . . The offense of following or loitering near another, often surreptitiously, to annoy or harass that person or to commit a further crime such as assault or battery.' . . . To 'loiter' means 'to remain in an area for no obvious reason.' " (Citation omitted.) Id., 115.

Notably, in *Princess Q. H.*, this court determined that the trial court did not abuse its discretion in determining that the defendant's conduct "in driving past [the plaintiff's] home, turning around, and immediately driving

past her home a second time," without stopping the vehicle or interacting with the plaintiff or her daughter, who was present in the plaintiff's driveway, constituted an act of stalking. Id., 116. This court recognized that "the defendant's conduct might have been completely unrelated to stalking the plaintiff. The court, however, was not presented with evidence of such a benign explanation, but heard ample evidence about the parties' stormy relationship and the fact that the plaintiff and the defendant were adverse parties in a civil action at the time of this occurrence." Id.

In the present case, E. H. testified that she saw the defendant pulled over on the side of the road a couple of houses down from the plaintiff's house. She further testified that, when she returned from the store forty-five minutes later, she saw the defendant parked in a different spot, farther down the road and facing a different direction. Consistent with this testimony, the court found, at the conclusion of the hearing, that the defendant had stalked the plaintiff. Specifically, the court found that the defendant had surveilled the plaintiff by parking her car outside his home. In its statement of decision, the court reiterated its finding that the defendant stalked the plaintiff in person. In light of the evidence presented to the trial court, we conclude that the court did not abuse its discretion in concluding that the defendant's conduct in driving near the plaintiff's home and sitting in her vehicle in two different locations over the course of a forty-five minute time period constituted an act of stalking.[8]

Importantly, as in *Princess Q. H.*, "the defendant did not testify as to any contrary explanation for [her] presence near [his] home." Id. Thus, the court was not presented with any evidence to refute that the defendant was near the plaintiff's home or evidence of a benign explanation for her presence.

Finally, we reiterate that "trial courts have a distinct advantage over an appellate court in dealing with domestic relations, where all of the surrounding circumstances and the appearance and attitude of the parties are so significant. . . . We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached . . . as [t]he conclusions which we might reach, were we sitting as the trial court, are irrelevant." (Internal quotation marks omitted.) Id., 116.

The judgment issuing the one year restraining order is affirmed; the ex parte restraining order, to the extent that it extended protection to the parties' children, is vacated.

* In accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2018), as amended by the Violence Against Women Act Reauthorization Act of 2022, Pub. L. No. 117-103, § 106, 136 Stat. 49, 851; we decline to identify any person protected or sought to be protected under a protection order, a protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

[1] The plaintiff did not file a brief or otherwise participate in the present appeal. On February 23, 2023, this court ordered that the appeal be considered on the basis of the defendant's brief, the record, and the defendant's oral argument.

[2] The defendant also claims that the trial court improperly found that she had accused the plaintiff of committing sexual abuse and that the plaintiff "lied on his ex parte affidavit." See footnotes 5 and 8 of this opinion.

[3] See footnote 5 of this opinion.

[4] The court set the restraining order to expire one year later, on May 13, 2023. The defendant's appeal from the order granting the restraining order is not moot. See *V. V.* v. *V. V.*, 218 Conn. App. 157, 166 n.9, 291 A.3d 109 (2023) (expiration of domestic violence restraining order issued pursuant to § 46b-15 does not render appeal from that order moot due to adverse collateral consequences). The ex parte restraining order expired on May 12, 2022, with a one day continuation of the ex parte restraining order to May 13, 2022, when the hearing concluded. Despite the expiration of the ex parte restraining order in May, 2022, the defendant's appellate claim regarding that order is also not moot. See id.; see also *Kyle S.* v. *Jayne K.*, 182 Conn. App. 353, 364–65, 190 A.3d 68 (2018) (fact that emergency ex parte order of custody was superseded by later order did not render appeal moot).

[5] The court also found that the defendant had "made unwanted messages to a third person, namely, she . . . has contacted a . . . business relationship of the plaintiff pretending to be a . . . reporter and indicating that a story was being written about the [plaintiff] for sexual abuse or . . . other negative issues." The evidence underlying this finding was the testimony of Peter Tiezzi III, who serves as the general manager of Motorsports for Whelen Engineering. Tiezzi testified to an incident that occurred on April 22, 2022, in which a person who identified herself as Samantha called him from the New York Times and "wanted to know the relationship between Whelen and [the plaintiff]" and stated that they were doing a story on the plaintiff "and four others, about domestic violence and referenced Jennifer's Law." There was evidence as to the telephone number from which this call was made and the defendant stipulated that this telephone number was, in fact, hers.

The defendant claims on appeal that the court, in making its finding, "slandered [her]," because she "never made any claims that the plaintiff engaged in sexual abuse." The defendant further argues that the trial court's repetition of this finding rose "to the level of libel" and "show[ed] malice."

We conclude that the defendant's mere assertions of slander and libel, made in the context of an appeal from the granting of a restraining order and unaccompanied by citation of authorities, are inadequately briefed. The only citation to any legal authority in this section of her brief is a case involving an action for slander, which is plainly distinct from the present restraining order case. "We repeatedly have stated that [w]e are not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . [When] a claim is asserted in the statement of issues but thereafter receives only cursory attention in the brief without substantive discussion or citation of authorities, it is deemed to be abandoned. . . . For a reviewing court to judiciously and efficiently . . . consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs." (Internal quotation marks omitted.) *C. B.* v. *S. B.*, 211 Conn. App. 628, 630, 273 A.3d 271 (2022). Accordingly, we decline to review the defendant's claim.

[6] The defendant principally argues that the evidence was insufficient to support a finding of "a continuous threat of present physical pain or physical injury." See General Statutes § 46b-1 (b) (1). That is but one of the definitions of domestic violence contained in § 46b-1. The defendant's argument fails on the fact that the court made a finding that the defendant stalked the plaintiff, which is a separately defined act within the definition of domestic violence. See General Statutes § 46b-1 (b) (2).

[7] General Statutes § 53a-181d, which criminalizes stalking in the second degree, provides in relevant part: "(a) For the purposes of this section: (1) 'Course of conduct' means two or more acts, including, but not limited to, acts in which a person directly, indirectly or through a third party, by any action, method, device or means, including, but not limited to, electronic or social media, (A) follows, lies in wait for, monitors, observes, surveils, threatens, harasses, communicates about or with or sends unwanted gifts to, a person, or (B) interferes with a person's property . . . ."

Subsection (b) of § 53a-181d provides: "A person is guilty of stalking in the second degree when: (1) Such person knowingly engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to (A) fear for such specific person's physical safety or the physical safety of a third person; (B) suffer emotional distress; or (C) fear injury to or the death of an animal owned by or in possession and control of such specific person; (2) Such person with intent to harass, terrorize or alarm, and for no legitimate purpose, engages in a course of conduct directed at or concerning a specific person that would cause a reasonable person to fear that such person's employment, business or career is threatened, where (A) such conduct consists of the actor telephoning to, appearing at or initiating communication or contact to such other person's place of employment or business, including electronically, through video-teleconferencing or by digital media, provided the actor was previously and clearly informed to cease such conduct, and (B) such conduct does not consist of constitutionally protected activity; or (3) Such person, for no legitimate purpose and with intent to harass, terrorize or alarm, by means of electronic communication, including, but not limited to, electronic or social media, discloses a specific person's personally identifiable information without consent of the person, knowing, that under the circumstances, such disclosure would cause a reasonable person to: (A) Fear for such person's physical safety or the physical safety of a third person; or (B) Suffer emotional distress."

[8] The defendant claims on appeal that the plaintiff "lied on his ex parte affidavit." Specifically, she points to paragraph five of the affidavit accompanying his application for relief from abuse, in which he averred, in relevant part, that he had received a call from his "race team manager stating that one of [his] sponsors had informed him they would no longer sponsor the team. . . . Whelen has pulled their funding for the vehicle, severely affecting my business." The defendant contrasts this statement with the plaintiff's testimony, on cross-examination during the hearing, that Whelen was not funding him and "[t]here was no money involved." We conclude that we need not address the defendant's claim with respect to the plaintiff's affidavit in light of our separate and independent determination that the court did not abuse its discretion in concluding that the defendant committed an act of stalking, on the basis of evidence that the defendant drove near the plaintiff's home and sat in her vehicle in two different locations over the course of a forty-five minute time period, which conduct also was set forth in the plaintiff's affidavit.