

KECIA REYNOLDS

v.

MICHAEL DAVISON

Submitted on Briefs May 24, 2012

Decided May 31, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, GORMAN, and
JABAR, JJ.

MEMORANDUM OF DECISION

Michael Davison appeals from the judgment of the District Court (Portland, *Moskowitz, J.*) entering a final order of protection from abuse, 19-A M.R.S. § 4007 (2011), in favor of Kecia Reynolds on behalf of herself and of the parties' minor son after a contested hearing.

First, contrary to Davison's contention, the court neither clearly erred nor abused its discretion in excluding from evidence two audio recordings for which Davison made offers of proof, asserting that the recordings were relevant to determinations of Reynolds's credibility. *See Malenko v. Handrahan*, 2009 ME 96, ¶ 30, 979 A.2d 1269 (stating the standard of review). These out-of-court statements were offered regarding matters collateral to the issues at the hearing and do not, therefore, meet the requirements for admitting prior inconsistent statements. *See State v. Thurlow*, 1998 ME 139, ¶ 4, 712 A.2d 518; *State v. Anguiano*, 672 A.2d 595, 596 (Me. 1996) ("The test for determining whether evidence is collateral is whether the fact could have been proved for any purpose in the absence of a contradiction."); *see also* M.R. Evid. 402 ("Evidence which is not relevant is not admissible.").

Second, the court's finding that Davison abused Reynolds and the son, within the meaning of 19-A M.R.S. § 4002(1) (2011), is supported by competent evidence on this record and is not clearly erroneous. *See Pelletier v. Pelletier*, 2012 ME 15, ¶ 13, 36 A.3d 903 (stating the standard of review and that determinations of witness credibility are within the fact-finder's authority); *Jussemaume v. Ducatt*, 2011 ME 43, ¶ 18, 15 A.3d 714.

Third, based on the competent record evidence that supports the court's implied findings and judgment, we cannot conclude that the court abused its discretion in awarding temporary parental rights and responsibilities of the son to Reynolds. *See* 19-A M.R.S. §§ 1653(3)-(6), 4007(1)(G) (2011); *Sheikh v. Haji*, 2011 ME 117, ¶¶ 12, 14, 32 A.3d 1065 (stating the standard of review). We do not reach Davison's argument that the court abused its discretion in awarding no rights of contact, concluding that that issue is moot. Davison has been awarded rights of contact in amended final orders of protection from abuse, consistent with interim orders entered in PORDC-FM-11-973, which have superseded and replaced the order from which this appeal was taken. *See generally Young v. Young*, 2002 ME 167, ¶¶ 6-7, 810 A.2d 418.

The entry is:

Judgment affirmed.

On the briefs:

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