

PAT DOE

v.

LEO BARNETT

Submitted on Briefs January 23, 2020
Decided January 30, 2020

Panel: ALEXANDER, MEAD, GORMAN, JABAR, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Leo Barnett appeals from a judgment of the District Court (Waterville, *Montgomery, J.*) granting a protection from abuse order requested by Pat Doe. *See* 19-A M.R.S. §§ 4001-4014 (2018). Barnett does not challenge the court’s findings that Barnett abused Doe. *See id.* § 4002(1) (defining “abuse”). Instead, Barnett assigns error to the court’s determination that Barnett failed to establish that his actions were taken in defense of his property. *Cf.* 17-A M.R.S. § 105 (2018) (“A person is justified in using a reasonable degree of nondeadly force upon another person when and to the extent that the person reasonably believes it necessary to prevent . . . an unlawful taking of the person’s property.”).

As relevant to our resolution of this appeal, the District Court found that Barnett’s use of force against Doe was unreasonable and, therefore, that the doctrine of defense of property did not provide any justification for his actions.

To prevail on appeal, Barnett must show that the evidence compelled the court to conclude, in this civil action, that he had proved this defense as a matter of law. *See Thibodeau v. Slaney*, 2000 ME 116, ¶ 20, 755 A.2d 1051 (explaining

that, in civil actions, the party asserting a justification or an affirmative defense bears the burden of proof); *cf. In re Trever I.*, 2009 ME 59, ¶ 13, 973 A.2d 752. Thus, Barnett needed to demonstrate that his use of force was reasonable in relation to the threat perceived. *See Horton & McGehee, Maine Civil Remedies* § 17-2(c) at 351 (4th ed. 2004); Restatement (Second) of Torts § 77(b) (Am. Law Inst. 1965). The trial court committed no error of fact or law when it found that, even if his actions could be justified by defense of property, Barnett's use of force against Doe was objectively unreasonable under the circumstances. Accordingly, the court did not err in rejecting Barnett's defense of property claim or in granting Doe's request for a protection from abuse order.

The entry is:

Judgment affirmed.

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for appellant Leo Barnett

C.H. Spurling, Esq., Gardiner, for appellee Pat Doe