

DAVID L. DRAKE

v.

SCOTT E. STACKPOLE

Submitted on Briefs November 23, 2009

Decided December 17, 2009

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

#### MEMORANDUM OF DECISION

Scott E. Stackpole appeals from a final protection from abuse order entered in the District Court (Portland, *M.G. Kennedy, J.*) on a complaint filed by David L. Drake on behalf of Drake's minor son.

Contrary to Stackpole's contentions, the evidence is sufficient to support the court's finding that Stackpole abused Drake's son within the meaning of 19-A M.R.S. §§ 4002(1), 4006(1), 4007(1) (2008), and there is no indication that the court misapplied the law in making that finding, notwithstanding Stackpole's assertion that the evidence shows that he justifiably used only a reasonable degree of force to prevent or punish the boy's misconduct. *See* 17-A M.R.S. § 106(1), (1-A) (2008);<sup>1</sup> *L'Heureux v. Michaud*, 2007 ME 149, ¶ 5, 938 A.2d 801, 802; *Jacobs v. Jacobs*, 2007 ME 14, ¶ 5, 915 A.2d 409, 410; *Smith v. Hawthorne*, 2002 ME 149, ¶¶ 17-18, 20-22, 804 A.2d 1133, 1139-40. Additionally, the court did not err or abuse its discretion when it admitted evidence relating to incidents of Stackpole's abusive behavior on other occasions. *See* 19-A M.R.S. § 4002(1)(B);

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<sup>1</sup> Title 17-A M.R.S. § 106(1), (1-A) has since been amended by P.L. 2009, ch. 336, §§ 6, 7 (effective Sept. 12, 2009).

*State v. Roberts*, 2008 ME 112, ¶ 21, 951 A.2d 803, 810-11; *Smith*, 2002 ME 149, ¶¶ 17-18, 20, 804 A.2d at 1139-40.<sup>2</sup>

The entry is:

Judgment affirmed.

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Portland District Court docket number PA-2008-1223  
FOR CLERK REFERENCE ONLY

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<sup>2</sup> David L. Drake asserts on appeal that the court erred when it approved a statement of proceedings in lieu of transcript pursuant to M.R. App. P. 5(d). Without deciding whether Drake's argument is properly before us, it is immediately apparent that the court did not err in approving a statement of proceedings in lieu of transcript at the time. *See, e.g., Cates v. Donahue*, 2007 ME 38, ¶ 2, 916 A.2d 941, 942. Since the hearing was held in this case, the District Court has adopted the practice of recording all protection from abuse hearings.