

**IN THE SUPREME COURT**

**STATE OF NORTH DAKOTA**

Amber Lehnerz, individually and	)	
on behalf of O.E.P.,	)	
	)	
Petitioner and Appellee,	)	<b>Supreme Ct. Case No. 20210353</b>
	)	
vs.	)	<b>District Ct. Case No. 17-2021-CV-00029</b>
	)	
Megan Christopher,	)	
	)	
Respondent/Appellant.	)	

**APPELLEES' BRIEF**

APPEAL FROM AMENDED DISORDERLY CONDUCT RESTRAINING ORDER  
 ENTERED DECEMBER 2, 2021  
 GOLDEN VALLEY DISTRICT COURT, SOUTHWEST JUDICIAL DISTRICT  
 THE HONORABLE JAMES D. GION

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**TABLE OF CONTENTS**

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES .....	3
STATEMENT OF FACTS.....¶	1
LAW AND ARGUMENT.....¶	40
A. Standard of Review.....¶	40
B. The District Court Properly Found That There Were Reasonable Grounds to Believe Appellant Engaged in Disorderly Conduct Toward Appellees.....¶	44
CONCLUSION.....¶	56
CERTIFICATE OF COMPLIANCE.....¶	57

## **TABLE OF AUTHORITIES**

### **CASES**

<u>Cusey v. Nagel</u> , 2005 ND 84, 695 N.W.2d 697.....	¶ 44
<u>Edward H. Schwartz Constr., Inc. v. Driessen</u> , 2006 ND 15, 709 N.W.2d 733.....	¶ 43
<u>Gonzalez v. Witzke</u> , 2012 ND 60, 813 N.W.2d 592 .....	Passim
<u>Rath v. Rath</u> , 2016 ND 71, 877 N.W.2d 298.....	¶ 42, ¶ 44
<u>Skadberg v. Skadberg</u> , 2002 ND 97, 644 N.W.2d 873.....	¶ 44, ¶ 48, ¶ 50, ¶ 52
<u>Wetzel v. Schlenvogt</u> , 2005 ND 190, 705 N.W.2d 836.....	¶ 44
<u>Williams v. Spilovoy</u> , 536 N.W.2d 383, 385 (N.D. 1995) .....	¶ 50

### **STATUTES**

N.D.C.C. § 12.1-31.2-01(1).....	¶ 41, ¶ 48
N.D.C.C. § 12.1-31.2-01(4).....	¶ 44
N.D.C.C. § 12.1-31.2-01(5)(d).....	¶ 42, ¶ 50

### **OTHER AUTHORITIES**

North Dakota Rules of Appellate Procedure, Rule 32(a)(8)(A).....	¶ 57
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## **STATEMENT OF FACTS**

¶ 1. Respondent/Appellant Megan Christopher (hereinafter “Megan”) has two children from a previous relationship with Michael Schillo (hereinafter “Michael”), namely S.T.S., born in 2014, and B.O.C., born in 2017. Megan and Michael share parenting time of their two minor children pursuant to a parenting responsibility Judgment. [R12:¶ 3]

¶ 2. Following his relationship with Megan, Michael later began dating Petitioner/Appellee Amber Lehnerz (hereinafter “Amber”). At all times relevant to the underlying matter, Amber and Michael were either dating or engaged to be married. As a result, Amber often cared for S.T.S. and B.O.C., including picking them up from daycare.

¶ 3. On October 13, 2021, Amber, on behalf of herself and her minor daughter, O.E.P., filed a sworn Petition with the Golden Valley District Court seeking a Disorderly Conduct Restraining Order (“DCRO”) against Megan. [R2] The District Court reviewed Amber’s Petition and issued a Temporary DCRO against Megan later the same day. [R6]

¶ 4. Amber’s Petition details numerous self-documented incidents spanning the course of nearly one year to illustrate Megan’s continuous pattern of behavior. [R2:4-34]

¶ 5. The earliest documented incident within the Petition occurred on the morning of November 30, 2020, when Megan confronted Amber outside of Dakota Kids Daycare. Megan waited for Amber to park before approaching her and yelling “[Michael] needed to send [Megan] an email.” Amber moved towards the front door, but Megan blocked her path, continuing to yell at Amber. To deescalate the situation, Amber returned to her vehicle and called Michael. Megan then stood between Amber’s car and the entrance of the daycare yelling various offensive remarks toward Amber for approximately twenty minutes until she eventually got back into her own car and left. [R2:32-33]

¶ 6. Later that afternoon, on November 30, 2020, Michael and Amber arrived at the elementary school to pick up S.T.S. As Amber got out of her vehicle, Megan drove past, but then decided to turn around and park behind Amber. Megan began filming Amber as she walked S.T.S. to the vehicle and got him in the car. Once Amber was in the front seat, Megan pulled beside Amber's vehicle, looked inside, then drove away. [R2:30-31]

¶ 7. On December 17, 2020, as Amber was leaving the elementary school following after school pick up, Megan drove by in her state-issued Highway Patrol vehicle and gave Amber the middle finger. [R2:28]

¶ 8. On February 6, 2021, at a youth wrestling tournament in Watford City, Amber was sitting in the gymnasium. Megan entered and sat directly behind Amber and proceeded to photograph Amber throughout the day. Amber indicated that prior to this incident she had asked Megan to stop photographing her and O.E.P. many times. [R2:26]

¶ 9. On March 6, 2021, at another wrestling meet in Beulah, Amber was already in attendance when Megan arrived and again sat directly behind Amber, proceeding to keep her phone trained on Amber throughout the day. At one point Amber told the kids to get warmed up and Megan shouted at Amber, "ok, crazy" along with other comments that Amber could not decipher. The two briefly exchanged words with Amber finally telling Megan that if she could not be appropriate, then she needed to move, but Megan refused to leave the area where Amber was seated. [R2:24-25]

¶ 10. On April 9, 2021, Amber went to drop the children off when she noticed Megan parked up the street facing the daycare. Megan was photographing Amber the entire time during the drop off and continued to do so as she drove away. [R2:22-23]

¶ 11. On June 24, 2021, Amber was at the high school for summer basketball practice when Megan arrived in her Highway Patrol uniform. Megan located Amber and sat right beside her. Megan told her son, B.O.C., that Amber was “mean.” After the practice ended, Megan stood outside watching Amber until the boys were in the car. [R2:20-21]

¶ 12. On July 22, 2021, Amber took the boys to swimming lessons in Beach. Megan showed up at the swimming pool in her Highway Patrol uniform, took a few photographs of Amber, and left after speaking with a pool employee. After swimming lessons, Amber took the boys to basketball practice. Megan also appeared at basketball practice and again photographed Amber in attendance. Megan watched the kids practice for a while, briefly spoke with them, and left. As Amber got the boys loaded in the car after practice, Megan sat outside watching them from her patrol vehicle. [R2:18-19]

¶ 13. On September 18, 2021, during a custody exchange with Michael, Megan had an angry outburst, stating that she did not know why Amber had to be so mean. Amber told Megan she was not being appropriate, but Megan replied she can say whatever she wants. Amber then handed Megan a backpack, but Megan threw it at Michael. [R2:16-17]

¶ 14. On September 25, 2021, a community fundraiser for Michael, Amber, and their family was held at the Golva Fire Hall to help defray medical costs after a severe E.coli outbreak left several members of the Schillo family, including S.T.S., hospitalized for an extended period. Prior to the event, fliers were posted throughout the community. Megan reportedly defaced several fliers. She added a handwritten note to one flier thanking those who organized the event, but encouraged people to instead donate to another member of the community rather than the Schillo family. Megan signed her name under the note. A picture of the flier from the Beach Post office was included in the Petition. [R2:9-10]

¶ 15. Despite discouraging the community from supporting the Schillo family, Megan herself attended the fundraiser. Megan began filming and photographing Amber, Michael, and O.E.P. soon after her arrival. Multiple community members observed Megan's seemingly odd behavior and told Amber what they witnessed. One individual sent Amber a photograph of Megan with her phone directed at Amber. Amber asked Megan to stop, as she had done many times before, but Megan made a nasty face and continued over Amber's objection. Amber was later told by an attendee seated next to Megan that she witnessed Megan recording Amber as she walked to the restroom and back. [R2:8-9,11,15]

¶ 16. On October 1, 2021, Amber was stopped in the parking lot of Beach High School with her rear car door open as Megan drove by in her Highway Patrol vehicle. Megan turned around and pulled in beside Amber's vehicle. Megan began yelling at Amber through the open window. Amber got back in the front seat and drove away as Megan continued yelling at her. [R2:6-7]

¶ 17. On October 8, 2021, Amber went to the courthouse in Beach to file her Petition for a DCRO, but the courthouse was closed. As she walked back to her car, Megan drove by in her personal vehicle and began "waiving dramatically" at Amber. Amber did not acknowledge her, instead making a phone call before eventually departing. Megan circled the block to return to Amber's location, still waving, this time speaking to Amber from her open window. Amber proceeded down the street to the post office, but Megan followed, parking across from the post office. Amber decided not to stop at the post office and continued driving. Megan exited her vehicle and filmed Amber and O.E.P. as they passed. Amber and her daughter went to the gas station and waited for Megan to leave before returning to the post office fifteen minutes later to finish their errands. [R2:4-5]

¶ 18. After being served with the Temporary DCRO, Megan filed a Motion to Dismiss the action along with a sworn statement rebutting each of Amber's detailed encounters, supplanting Amber's claims with Megan's own version of events. [R10-12]

¶ 19. Throughout Megan's sworn statement, she posits that Amber is motivated by "vindictiveness and maliciousness," [R12:¶ 2] often acts "irrationally" and accuses Megan of "bizarre" things, [R12: ¶ 8] has a "bizarre fixation" with Megan and will not leave her alone, [R12: ¶ 15] and finally that Amber is in need of some serious mental help to get over her "fixation" of Megan. [R12:¶ 19]

¶ 20. Megan emphasized throughout her statement that she only recorded and photographed encounters with Amber for documentation to "protect" herself against any future false accusations. [R12: ¶ 6, ¶ 8, ¶ 14, ¶ 15, ¶ 16, ¶ 17] Megan stated she would present certain supporting video evidence at the hearing, but failed to do so. [R12: ¶ 11] Despite echoing her desire to "protect" herself some half-dozen times throughout her statement, Megan "didn't think" to offer any of that purported documentation later at the evidentiary hearing. [Tr. of Evidentiary Hearing, October 27, 2021, at 17:12-25; 18:1-4]

¶ 21. Megan attempted to rebut the two handwritten statements of daycare staff attached as supporting references with Amber's Petition [R2:34] by requesting follow-up statements from the same two individuals and included them with her Motion to Dismiss. [R13] In her statement, Megan argues Amber "twisted" the providers' statements to make their inclusion seem like recent events. [R12: ¶23] Neither Megan, nor the daycare providers, suggest Megan never had outbursts at daycare preventing Amber from picking up the children, rather they clarify the events were not recent. [R12: ¶ 23; R13] Amber included a dated reference to a specific daycare incident November 30, 2020. [R2:32-33]



¶ 22. At the evidentiary hearing on October 27, 2021, Megan testified she was “vaguely” familiar with Amber, had only learned of her last name “recently,” and still had not been formally introduced to Amber as far back as approximately September of 2019. [10/27/21 Tr. 8:21-25; 9:1-7]

¶ 23. Megan denied taking any direct video of Amber at the fundraising event, but did admit to taking a few still shots of Amber’s “baby bump” to send to her sister in an attempt to more closely observe Amber’s pregnancy status. [10/27/21 Tr. 13:5-20]

¶ 24. Megan testified that Amber specifically asked her “once” not to photograph O.E.P. Megan first testified she “never” photographed O.E.P., before later admitting she may have “accidentally” taken photos of O.E.P. while documenting something in O.E.P.’s vicinity. Megan argued it was seemingly unfair to be called out for “accidentally” taking pictures of O.E.P. considering Megan observed photographs on Facebook of O.E.P. that were taken by other people and deemed acceptable. [10/27/21 Tr. 13:5-20; 28:10-23]

¶ 25. Megan recalled that Amber told her specifically at the benefit supper to “knock it off” with regard to photographing Amber in public, but Megan could not directly recall any other instance of being asked not to do so. [10/27/21 Tr. 14:2-13]

¶ 26. Megan testified that as a State Trooper with the Highway Patrol she was familiar with the North Dakota Century Code and state law; responding in the affirmative when asked, more specifically, if she understood what “stalking” and “harassment” were. [10/27/21 Tr. 14:23-25; 15:1-13]

¶ 27. Megan testified that she had never engaged in any sort of behavior that could be considered stalking or harassing towards Amber, regardless of whether or not she was actively taking photographs or video recordings at that time. [10/27/21 Tr. 15:14-20]

¶ 28. Megan testified that Amber was actually the one who was stalking and harassing her, bringing “nasty negativeness” and chaos to her and her family, and that Megan was only trying to document it. [10/27/21 Tr. 17:12-23] However, Megan later testified that she could not recall a single time when Amber showed up unannounced or caused any problems with Megan picking up the boys from daycare. [10/27/21 Tr. 18:5-8]

¶ 29. Megan testified that she is not a vindictive person and she has never tried to put any restrictions on who can pick up the kids at daycare. [10/27/21 Tr. 18:25; 19:1]

¶ 30. Amber testified as to the specificity of the allegations in her Petition, stating she made notes in her phone after each of the included allegations at the time of their occurrence, adding that the specific incidents detailed in her Petition were certainly not an exhaustive list of all relevant encounters. [10/27/21 Tr. 33:4-10; 35:21-23; 39:16-18]

¶ 31. Amber testified she felt intimidated and harassed by Megan’s behavior, especially when Megan appeared at locations where she had no justifiable reason to be at the time. [10/27/21 Tr. 34:1-25; 35:1-16]

¶ 32. Due to the requisite hearing procedure of the district and predetermined time limitations, the affidavits of both parties were considered, in their entirety, by the District Court in advance of the allotted cross-examination testimony presented. [10/27/21 Tr. 5:10-18; 6:14-25; 7:1-2; 49:21-22] Counsel asked the Court to recall the primary affidavits and take judicial notice of their contents during closing arguments. [10/27/21 Tr. 44:21-23]

¶ 33. Following counsels’ closing arguments, the District Court performed an analysis of the evidence, both filed and presented, and made specific findings, including whether certain activities generally considered constitutionally-protected activities could ultimately expand beyond the scope of that protection. [10/27/21 Tr. 48:20-25; 49:1-9]

¶ 34. At the conclusion of the District Court’s analysis, after considering the totality of the circumstances against the “reasonable grounds” burden of proof standard, the Court found that Megan’s actions were not just unwanted, but affirmatively finding such actions were intended to affect the safety, security, and privacy of Amber and her daughter. As the Court began crafting special terms for inclusion in the final restraining order to allow the parties to coexist in a small community subject to their shared parenting responsibilities, Megan’s counsel interjected and raised the issue of Megan’s probable loss of employment. [10/27/21 Tr. 49-54]

¶ 35. The District Court continued the matter, after a discussion with the parties and upon their consent, to allow the parties an opportunity to discuss possible alternative resolutions. [10/27/21 Tr. 54:19-25; 55]

¶ 36. After failing to reach a reasonable alternate resolution, the matter was set for a second hearing and the parties reconvened December 2, 2021. [12/02/21 Tr. 2:9-16]

¶ 37. The Court indicated it would not entertain new evidence, but allowed the parties an opportunity to renew their closing arguments in the case. Counsel refreshed their earlier closing arguments along with new supporting caselaw. [12/02/21 Tr. 3:12-23; 4-12]

¶ 38. The District Court revived its previous holding, finding Amber had met the reasonable grounds burden for the Court to issue a permanent DCRO. The Court also touched again on the limitations of constitutionally protected activity in the context of the allegations set forth from the evidence provided and presented. [12/02/21 Tr. 13:9-25]

¶ 39. The Court considered the testimony of both parties and found that Megan’s explanation surrounding the events, on the whole, was perceived as being less credible than Amber’s testimony regarding the series of offending incidents. [12/02/21 Tr. 14:18-20]

## **LAW AND ARGUMENT**

### **A. Standard of Review**

¶ 40. The North Dakota Supreme Court “will not reverse a district court’s decision to grant a restraining order or to conduct a hearing unless the court abused its discretion.” Gonzalez v. Witzke, 2012 ND 60, ¶ 8, 813 N.W.2d 592 (internal citation omitted). A district court “abuses its discretion when it acts in an arbitrary, unreasonable, or unconscionable manner, when it misinterprets or misapplies the law, or when its decision is not the product of a rational mental process leading to a reasoned determination.” Id.

¶ 41. “‘Disorderly conduct’ means intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person. Disorderly conduct does not include constitutionally protected activity.” Id. at ¶ 10 (citing N.D.C.C. § 12.1-31.2-01(1)). Reasonable grounds exist for issuing a restraining order “when the facts and circumstances presented to the judge are sufficient to warrant a person of reasonable caution to believe that acts constituting disorderly conduct have been committed.” Gonzalez at ¶ 10 (internal citation omitted). “The term ‘reasonable grounds’ is synonymous with ‘probable cause.’” Id.

¶ 42. “If a person claims to have been engaged in a constitutionally protected activity, the court shall determine the validity of the claim as a matter of law and, if found valid, shall exclude evidence of the activity.” Id. at ¶ 20 (citing N.D.C.C. § 12.1-31.2-01(5)(d)). “If a court issues a disorderly conduct restraining order without addressing the constitutional claims, the court generally commits a reversible error” unless “we can say with certainty the court would have issued the restraining order based solely upon the uncontested conduct.” Rath v. Rath, 2016 ND 71, ¶ 12, 877 N.W.2d 298.

¶ 43. “On appeal, we do not reweigh conflicts in the evidence, and we give due regard to the trial court’s opportunity to judge the credibility of the witnesses.” Edward H. Schwartz Constr., Inc. v. Driessen, 2006 ND 15, ¶ 6, 709 N.W.2d 733.

**B. The District Court Properly Found That There Were Reasonable Grounds to Believe Appellant Engaged in Disorderly Conduct Toward Appellees.**

¶ 44. Before a court grants a petition for a disorderly conduct restraining order, the court must conduct a full hearing. Rath at ¶ 7 (citing N.D.C.C. § 12.1-31.2-01(4)). This hearing is a special summary proceeding designed to “quickly and effectively combat volatile situations before any tragic escalation.” Id. (citing Skadberg v. Skadberg, 2002 ND 97, ¶ 13, 644 N.W.2d 873). The hearing’s primary purpose “is to allow the parties to present evidence through testimony and allow the factfinder to hear and view the witnesses, assess their credibility, and thereby resolve factual disputes.” Rath at ¶ 7 (internal citation omitted). Because the hearing’s primary purpose is to assist the court in resolving factual disputes, the petitioner must generally “prove his petition through testimony, rather than by affidavits alone, with an opportunity for cross-examination.” Wetzel v. Schlenvogt, 2005 ND 190, ¶ 23, 705 N.W.2d 836; but see Cusey v. Nagel, 2005 ND 84, ¶ 15, 695 N.W.2d 697 (observing “[w]e have held that a trial court conducts a ‘full hearing’ on a disorderly conduct restraining order petition by accepting affidavits and allowing cross-examination, at least when the parties raise no objection to the form of the hearing.”).

¶ 45. In this case, the District Court conducted a proper hearing allowing the parties a full opportunity for cross-examination after fully reviewing the affidavits and other associated pleadings of the parties. Amber detailed twelve separate and specific incidents over the course of nearly a year in support of her Petition. [R2] On cross-examination, Amber testified there were numerous incidents not initially included in her

Petition, but properly established through her testimony that Megan’s behavior was escalating, her intimidating conduct was becoming more frequent, and her actions clearly amounted to harassment toward Amber and her daughter. [10/27/21 Tr. 40:10-14; 41:2-12]

¶ 46. Amber testified that Megan seemed to be purposely seeking her out in public, recording and photographing her for no legitimate reason, making O.E.P. feel uncomfortable at public events with her family, and causing overall difficulty in their day-to-day lives due to Megan’s intrusive acts that served no legitimate purpose other than to harass and annoy. Megan’s continuous obnoxious behavior, especially after being asked to discontinue them, showed her intention to adversely affect both Amber and O.E.P.’s safety, security, and privacy—even in a public setting. [10/27/21 Tr. 41:2-12]

¶ 47. In Gonzalez v. Witzke, plaintiff petitioned the district court for a disorderly conduct restraining order, alleging the defendant harassed her by using a video camera to record her, that he called her a “troll” and a “perjurer” during a confrontation, and that she feared for her and her family’s safety. 2012 ND 60, ¶ 3, 813 N.W.2d 592. The parties were neighbors with “a long acrimonious history.” Id. at ¶ 2. At the hearing, plaintiff testified that she trimmed some of defendant’s tree branches that hung over her fence to prevent damage to the fence. She further testified that the defendant used a video camera to record her actions and called her a “troll” and a “perjurer.” Plaintiff testified that defendant’s actions made her feel harassed and fearful of him. Id. at ¶ 4. The district court granted a disorderly conduct restraining order against defendant for two years based on the evidence presented at the hearing. Id. at ¶ 5.

¶ 48. On appeal, the Gonzalez Court affirmed the district court’s decision to issue the disorderly conduct restraining order against defendant for two years, holding “[a]

person of reasonable caution could believe that Witzke intended his oral statements and his video recording of Gonzalez to affect her safety, security, or privacy.” Id. at ¶ 13 (citing Skadberg v. Skadberg, 2002 ND 97, ¶¶ 8, 10, 644 N.W.2d 873). Witzke argued his conduct was constitutionally protected. Id. at ¶ 19. He argued the statements did not constitute “fighting words,” and they were not intended to affect the safety, security, or privacy of Gonzalez. He argued the words did not seriously cause fear otherwise she would have called the police. Id. The district court considered Witzke’s constitutional argument and concluded his words were not protected speech. The court said Witzke had no legitimate reason for using the words and intended only to harass Gonzalez. Id. at ¶ 20. The district court also found Witzke’s use of a video camera to record Gonzalez, although not illegal in itself, adversely affected her security and privacy. Id. at ¶ 22. The court stated, “I can’t think of no [sic] other reason to adversely affect the security or the privacy of Ms. Gonzalez.” Id. The district court concluded Witzke’s actions fell within the definition of disorderly conduct under N.D.C.C. § 12.1-31.2-01(1). Id.

¶ 49. Similar to Gonzalez, the parties here have a somewhat “acrimonious history” as a result of Megan’s intrusive and unwanted acts toward Amber and O.E.P. The instant case involves constitutional claims like Gonzalez that similarly involve allegations of video recording another person in public. Here, the District Court properly considered whether Megan’s acts of photographing and video recording of Amber and O.E.P. were constitutionally protected activities before ultimately determining that such conduct went beyond what could legitimately be considered constitutionally-protected activity and was equivalent to harassment which served no legitimate purpose other than to affect Amber and O.E.P.’s security and privacy. [10/27/21 Tr. 48:20-25; 49:1-9; 12/02/21 Tr. 13:9-25]

¶ 50. Even though a district court is not required to find a pattern of behavior when issuing a disorderly conduct restraining order, the court may make a finding when a pattern of behavior is present. See Skadberg, 2002 ND 97, ¶ 10, 644 N.W.2d 873 (the district court did not err in ruling a pattern of telephone calls was disorderly conduct under the statute). A district court may grant a disorderly conduct restraining order as long as it finds “reasonable grounds to believe that the respondent has engaged in disorderly conduct.” N.D.C.C. § 12.1-31.2-01(5)(d). In Gonzalez, evidence of confrontations between the parties dating back years was offered to the court. The Supreme Court stated district courts need not operate in a vacuum and may consider a pattern of previous conduct. See Gonzalez at ¶ 24 (internal citation omitted). “[I]n some instances, ‘mere presence is sufficient to cause such emotional stress as to adversely affect the safety, security, or privacy of the other person.’” Williams v. Spilovoy, 536 N.W.2d 383, 385 (N.D. 1995).

¶ 51. In the instant case a pattern of harassing and intimidating behavior existed, aside from just taking photos and video, as documented by Amber in her Petition and properly before the District Court to consider. An incident that involved Megan’s uncontroverted interference with Amber’s attempt to pick up the children from daycare was known to the Court. [R2:32-33; R12: ¶ 23; R13] The Court was given uncontested evidence of public encounters where Megan intentionally sat right beside or directly behind Amber at the kids’ sporting activities which had no reasonable justification beyond a clear intent to harass or annoy. [R2:26; R2:24-25; R2:20-21] There were also several encounters where Megan drove past Amber’s parked vehicle before deliberately returning to the location to place herself in direct proximity of Amber simply for the purpose of creating a situation where there otherwise would not have been none. [R2:30-31; R2:6-7; R2:4-5]



¶ 52. Appellant argues she did not engage in disorderly conduct toward O.E.P., thus the protection order between Megan and O.E.P. must be reversed. The Supreme Court, in Skadberg v. Skadberg, affirmed the district court's issuance of a disorderly conduct restraining order where evidence was presented that certain specific conduct, i.e. a pattern of hang-up calls, was having a negative impact on the parties' three-year old daughter. 2002 ND 97, ¶¶ 2, 10, 644 N.W.2d 873. Petitioner testified that the number and frequency of the telephone calls was affecting their daughter. Id. The Supreme Court found that "[w]hile support in the record for the order is sparse, a person of reasonable caution could believe acts constituting disorderly conduct had been committed" and "[i]t was reasonable to conclude the calls served no purpose other than to harass and intimidate." Id. at ¶ 10.

¶ 53. Amber testified that O.E.P. was no longer comfortable attending public events with her family because of the ongoing harassment she had been exposed to from Megan's actions. [10/27/21 Tr. 41:2-12] Evidence in the record shows that O.E.P. was present during several of these incidents that were primarily directed toward her mother, but O.E.P. was still impacted by them. O.E.P. was in the car with Amber on October 8, 2021, when Megan exited her vehicle and began filming both of them as they approached the post office. Amber and O.E.P. waited down the street at a gas station for Megan to leave the area before returning to the post office fifteen minutes later to finish their errands. [R2:4-5] O.E.P. was also admittedly photographed by Megan at the community pool, although Megan argued it was purely accidental. [10/27/21 Tr. 13:5-20; 28:10-23]

¶ 54. The motive for these harassing, unwanted, and intrusive behaviors directed at Amber is even more evident in light of Megan's comment to Amber in approximately June of 2020. Amber testified that she politely asked Megan to not to photograph her or

O.E.P. any further. Megan reportedly responded that Amber should have thought about that before she decided to start dating Michael. [10/27/21 Tr. 41:20-25] A review of the complete record before the District Court can yield only one logical result: that the District Court properly found reasonable grounds upon which to base its decision to issue a restraining order in favor of Amber and O.E.P. against Megan for the one-year duration.

¶ 55. The facts and circumstances presented to the District Court clearly warrant a person of reasonable caution to believe Megan's actions, on the whole, clearly demonstrate that acts constituting disorderly conduct were committed and the District Court found as such. Megan was given fair warning to curb her behavior, but she failed to do so. It is clear that the underlying purpose of Megan's incessant pattern of harassing, intrusive, and wholly unwanted actions were perpetrated for the primary purpose of adversely affecting the safety, security, and privacy Amber and O.E.P. Because there was no legitimate underlying justification found to warrant such behavior, Megan's actions cannot be considered constitutionally protected and the Amended Disorderly Conduct Restraining Order of the District Court entered December 2, 2021, should be affirmed.

### **CONCLUSION**

¶ 56. Appellees respectfully request that the decision of the District Court be affirmed in favor of upholding the final Amended Disorderly Conduct Restraining Order of the District Court entered December 2, 2021. The District Court did not abuse its discretion in granting the one-year protection order in favor of both Amber and O.E.P. after it properly found Megan clearly engaged in acts that constituted disorderly conduct and were not otherwise able to be considered constitutionally protected activity under the totality of the circumstances.

**CERTIFICATE OF COMPLIANCE**

¶ 57. The undersigned, as the attorney for the Appellees herein, certify that Appellee's Brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that it contains nineteen (19) pages.

DATED this 18<sup>th</sup> day of April, 2022.

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**IN THE SUPREME COURT OF THE STATE OF NORTH DAKOTA**

Amber Lehnerz, individually and	)	
on behalf of O.E.P.,	)	
	)	<b>CERTIFICATE OF SERVICE</b>
Petitioners/Appellees,	)	
	)	<b>Supreme Ct. Case No. 20210353</b>
vs.	)	(District Ct. Case No. 17-2021-CV-00029)
	)	
Megan Christopher,	)	
	)	
Respondent/Appellant.	)	

[¶1] I, Jared W. Gietzen, certify that on April 18, 2022, a true and correct copy of the following document was served through the North Dakota Supreme Court E-Filing Portal:

**1. APPELLEES' BRIEF**

[¶2] A copy of the foregoing was sent to the following email address:

**Jennifer M. Gooss**  
**Solem Law Office**  
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**Clerk of the Supreme Court**  
**supclerkofcourt@ndcourts.gov**

[¶3] That the above documents were duly served in accordance with the requirements of the North Dakota Rules of Civil Procedure and the North Dakota Rules of Appellate Procedure.

DATED this 18<sup>th</sup> day of April, 2022.

/s/ Jared W. Gietzen  
Jared W. Gietzen (ND ID # 07905)  
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