

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

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Tina M. George,	)	
	)	
	)	Supreme Court No. 20140063
Petitioner,	)	Dist. Ct. No. 08-2014-CV-00152
<i>and Appellant</i>	)	
vs.	)	
	)	
Jess J. George,	)	
	)	
	)	
Respondent,	)	
<i>and Appellee</i>	)	

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AMICUS CURIAE BRIEF  
IN SUPPORT OF PETITIONER

NORTH DAKOTA COUNCIL ON  
ABUSED WOMEN'S SERVICES

/s/Mikayla Jablonski Jahner

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**[¶ 3] AMICUS CURIAE STATEMENT OF IDENTITY AND INTEREST**

[¶ 4] North Dakota Council on Abused Women’s Services (hereinafter “ND CAWS”) is a non-profit coalition in good standing in North Dakota. The coalition is comprised of twenty (20) member programs across North Dakota. The purpose of ND CAWS is to provide leadership and support in identification, intervention, and prevention of domestic and sexual violence. ND CAWS seeks legislation, policy, and systems changes to promote victim safety and offender accountability. Its’ member programs serve on a variety of committees and forums designed to take action on specific relevant issues. ND CAWS has a vital and inherent interest in the issue raised by Petitioner, as ND CAWS’s member programs have an intimate, direct, and continuous stake in the interpretation and application of N.D.C.C. § 12.1-31.2-01, Disorderly Conduct Restraining Order–Penalty.

**[¶ 5] STATEMENT OF AUTHORSHIP AND CONTRIBUTIONS**

[¶ 6] No party's counsel authored any portion of this brief. No party, counsel for any party, or any other person contributed any money toward the preparation or submission of this brief. This brief is solely the position of ND CAWS.

**[¶ 7] STATEMENT OF THE ISSUE**

**[¶ 8]** Whether the Judicial Referee erred in dismissing Tina George's Petition for Disorderly Conduct Restraining Order.

## **[¶ 9] ARGUMENT**

### **[¶ 10] The Judicial Referee Erred when it Dismissed Tina George’s Petition for Disorderly Conduct Restraining Order.**

[¶ 11] ND CAWS supports the belief that the purpose of court intervention is to prevent future harm from occurring to victims. Access to a variety of remedies, including disorderly conduct restraining orders, are vital. Victims cannot be limited to a single intervention if harm is to be prevented.

[¶ 12] N.D.C.C. § 12.1-31.2-01(1) provides the definition of disorderly conduct, stating disorderly conduct is “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.”

[¶ 13] The court is authorized to grant a disorderly conduct restraining order if the court finds “reasonable grounds to believe that the respondent has engaged in disorderly conduct.” Williams v. Spilovoy, 536 N.W.2d 383, 384 (N.D.1995).

[¶ 14] This Court has explained the ‘reasonable grounds’ requirements as follows:

Since chapter 12.1-31.2 does not define ‘reasonable grounds,’ we have construed the ‘reasonable grounds’ requirements to be synonymous with ‘probable cause.’ Williams, supra (citing Svedberg v. Stamness, 525 N.W.2d 678, 682 (N.D.1994)). We have explained that ‘[r]easonable grounds exist for purposes of this section when facts and circumstances presented to the judge are sufficient to warrant a person of reasonable caution to believe that acts constituting the offense of disorderly conduct have been committed.’ Svedberg, 525 N.W.2d at 682; see also Williams, supra.

Wishnatsky v. Huey, 1997 ND 35, ¶ 7, 560 N.W.2d 878.

[¶ 15] “In other words, an objective, reasonable person must believe the respondent has engaged in ... [disorderly conduct].” Rebel v. Rebel, 2013 ND 164, ¶ 12, 837 N.W.2d 351 (quoting Wetzel v. Schlenvogt, 2005 ND 190, ¶ 19, 705 N.W.2d 836).

[¶ 16] “To support a request for a disorderly conduct restraining order, the petitioner must present evidence of specific acts or threats constituting disorderly conduct, and “subjective fear” is not sufficient to support an order.” Baker v. Mayer, 2004 ND 105, ¶ 13, 681 N.W.2d 261 (quoting Tibor v. Lund, 1999 ND 177, ¶ 7, 599 N.W.2d 301). “It is insufficient to show the person’s actions are unwanted; rather, the petitioner must show specific unwanted acts that are intended to affect the safety, security, or privacy of another person.” Rebel, at ¶ 13, (quoting Cusey v. Nagel, 2005 ND 84, ¶ 7, 695 N.W.2d 697).

[¶ 17] Tina George (hereinafter “Tina”) testified to specific unwanted acts committed by Jess George (hereinafter “Jess”) at the hearing on February 10, 2014; these cumulative acts constituted disorderly conduct. Tina’s testimony regarding these specific acts provided the Judicial Referee with reasonable grounds to believe Jess engaged in disorderly conduct.

[¶ 18] Tina repeatedly asked Jess to leave her alone, to stop calling her, to stop texting her and to stop following her. Transcript 10-11. These requests were ignored by Jess and he continued to follow Tina. Tr. 11. Jess continued to show up uninvited at places such as her church, her work, and at fast food restaurants. Tr. 11, 12-16.

[¶ 19] Tina took drastic measures and went to great lengths to ensure her safety, as she wanted to avoid having Jess find her. Tr. 19, 22. She parked her vehicle at a different apartment building, she locked her doors and closed her blinds, she kept a chair under her locked front and back door, she locked her own bedroom door, she installed security cameras, she kept a hammer and screwdriver with her when she slept at night and she has tested for a concealed weapons permit. Id.



**[¶ 20]** The fear instilled in Tina was not just subjective fear, as Tina continuously asked Jess to leave her alone and he refused, causing Tina's sense of safety, security, and privacy to be adversely affected. Tr. 10-11. Tina's requests of Jess to leave her alone demonstrated to Jess the actions were unwanted and there was no legitimate reason for Jess to continue the behavior once he was given notice that Tina did not want him to call her, text her, or follow her.

**[¶ 21]** Although it is insufficient to only show that the person's actions are unwanted, Tina testified to several specific acts that affected her safety, security, and privacy. Tina testified at the hearing that Jess constantly drove by her new home (Tr. 8); he bothered her at her place of employment (Tr. 10); he followed her to and through the drive-thru restaurants (Tr. 10-11); he followed her to her church (Tr. 14-16); he took her on a wild, high speed chase up the interstate (Tr. 18-19); and he hacked in to her cell phone (Tr. 20-21). These specific acts were unwanted and caused Tina fear over the span of a year. Tr. 17, 22, 23.

**[¶ 22]** Tina also described in detail an incident in which Jess admitted that he had tampered with her phones. Tr. 19. Jess admitted to Tina that he pulled a voicemail message off of her cell phone voicemail because he knew her password. Tr. 20.

**[¶ 23]** During Judicial Referee Goter's closing remarks, he states, "[T]here was a piece of evidence that concerned me that was hacking into her phone, intentionally invading her sense of security and privacy." Tr. 24-25. Again, disorderly conduct is "intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person." N.D.C.C. § 12.1-31.2-01(1). Although this was just one of the many incidents that Tina described during the hearing, showing a

“pattern” is not required, and a single occurrence constituting disorderly conduct may be sufficient for the district court to grant the restraining order. Rebel, at ¶ 12 (citing Hanisch v. Kroshus, 2013 ND 37, ¶ 11, 827 N.W.2d 528; Gonzalez v. Witzke, 2012 ND 60, ¶ 23, 813 N.W.2d 592).

[¶ 24] Referee Goter acknowledges that this single incident was done with the intent of invading her security and privacy.

[¶ 25] Jess argues the Judicial Referee did not abuse its discretion when it dismissed Tina’s Petition for Disorderly Conduct Restraining Order. However, ND CAWS agrees with Appellant and believes Judicial Referee Goter abused his discretion when he dismissed Tina’s Petition for Disorderly Conduct Restraining Order, as he made several conflicting remarks in the closing of the Disorderly Conduct Restraining Order hearing.

[¶ 26] In Rebel v. Rebel, the Court stated that:

“Under N.D.C.C. § 12.1-31.2-01, the district court has discretion ‘to grant a disorderly conduct restraining order and to conduct a hearing on a petition for an order’” Hanisch v. Kroshus, 2013 ND 37, ¶ 9, 827 N.W.2d 528 (quoting Gonzalez v. Witzke, 2012 ND 60, ¶ 8, 813 N.W.2d 592). This Court will not reverse the district court’s decision to grant a restraining order or conduct a hearing unless there is an abuse of discretion. Hanisch, at ¶ 9. A 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.

Rebel, at ¶¶ 11-13.

[¶ 27] Referee Goter states at the close of the hearing, “There was a piece of evidence that concerned me that was hacking into her phone, intentionally invading her sense of security and privacy.” Tr. 24-25. Disorderly conduct is “intrusive or unwanted

acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.” N.D.C.C. § 12.1-31.2-01(1).

[¶ 28] By Referee Goter’s own words, he acknowledges Tina provided reasonable grounds to find Jess committed disorderly conduct by “invading her sense of security and privacy” when it came to the cell phone incident. The language Referee Goter uses to describe Jess’ hacking into Tina’s cell phone voicemail is eerily similar to the statute that defines disorderly conduct. Referee Goter essentially states that this one incident is disorderly conduct by using language from the statute.

[¶ 29] Referee Goter accepted Tina’s testimony regarding the cell phone incident, with no question as to the truthfulness of her testimony. A disorderly conduct restraining order may be granted if a person of reasonable caution would believe the facts and circumstances show that the person committed disorderly conduct. Wishnatsky, at ¶ 7 (citing Svedberg, at 682; see also Williams, supra). Referee Goter acted as a person of reasonable caution and believed the facts and circumstances show that Jess committed disorderly conduct by stating Jess invaded “her sense of security and privacy” in regards to the cell phone incident.

[¶ 30] However, Referee Goter made the determination to dismiss the disorderly conduct restraining order, stating “You still have the bond order to worry about. You still have your criminal charge to worry about, probably more appropriate to the facts that I have heard. So I’m going to dismiss this.” Tr. 24-25.

[¶ 31] On one hand, Referee Goter describes the incident regarding the cell phone as falling within the definition of disorderly conduct and then, on the other hand, he

immediately states that he will dismiss this case because Jess has other issues to worry about.

[¶ 32] And, although this was just one of the many incidents Tina described in which she felt Jess had affected her safety, security, or privacy, showing a “pattern” is not required, and a single occurrence constituting disorderly conduct may be sufficient for the district court to grant the restraining order. Rebel, at ¶ 12 (see Hanisch, at ¶ 11; see Gonzalez, at ¶23). Referee Goter acknowledges that this single incident was done with the intent of invading her security and privacy.

[¶ 33] During Referee Goter’s closing remarks to the parties, he also gives the following statement as reason to dismiss the disorderly conduct restraining order:

As ill conceived as it could be, and as dumb as it is, your behavior, Mr. George, is classic stalking which is why you’ve been charged. I have to find – for me to issue this – is that you have done this with the intent of hurting her. And everything I’ve got is you’re trying to reconcile. Obviously it has a negative impact on her. I don’t get that that was your intent which I have to find. It’s not the problem with stalking they have – just have to show that you intentionally engaged in the course of conduct which had the affect of frightening her, which it can.

Tr. 24-25.

[¶ 34] Referee Goter draws this conclusion of Jess’ intent, although Referee Goter never allowed Jess to take the stand during the hearing nor did he allow Tina to cross-examine Jess about his intent. If the two parties had not previously been married, Referee Goter may not have made this inference about Jess’ intent.

[¶ 35] More importantly, nowhere in the disorderly conduct statute does it state that Referee Goter must find that the intent was to hurt Tina or frighten her; disorderly conduct is “intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person.” N.D.C.C. § 12.1-31.2-01(1).

[¶ 36] Furthermore, stalking is “an intentional course of conduct directed at a specific person which frightens, intimidates, or harasses that person, and that serves no legitimate purpose.” N.D.C.C. § 12.1-17-07.1(1)(c).

[¶ 37] Referee Goter finds Jess’ conduct that was directed at Tina to be “classic stalking,” yet he does not find Jess’ conduct to be disorderly conduct. Referee Goter finds that Jess’ actions had a “negative impact” on Tina, yet he does not find Jess’ conduct to be disorderly conduct. Referee Goter finds Jess’ behavior invaded Tina’s “sense of security and privacy,” yet he did not find Jess’ conduct to be disorderly conduct.

[¶ 38] The facts in this case are so overwhelming and Referee Goter openly acknowledges that *at least one* of the specific acts that Tina testified to adversely affected Tina’s sense of security and privacy. To dismiss Tina’s Petition for Disorderly Conduct Restraining Order was an abuse of discretion.

[¶ 39] Referee Goter’s determination was not the product of a rational mental process leading to a reasoned determination, he misinterpreted and misapplied the law, and he acted arbitrary, unreasonable and in an unconscionable manner, as pointed out by Tina. Rebel, at ¶ 13 (Hanisch, at ¶ 9). This is a case of judicial abuse of discretion.

## **[¶ 40] CONCLUSION**

[¶ 41] Tina presented reasonable grounds at the disorderly conduct restraining order hearing for the Judicial Referee to grant her a disorderly conduct restraining order. By the Judicial Referee's own words, this is a classic case of stalking and at least one of the specific acts to which Tina testified adversely affected her sense of security and privacy.

[¶ 42] Behaviors similar to Jess George's behaviors, which frighten, coerce and force an individual back into a relationship that they have clearly separated themselves from, must have an intervention that is significant. In ND CAWS' opinion, actions defined as stalking are historically precursors to an elevated risk of violence and sometimes death. Disorderly conduct restraining orders are meant to increase safety for victims by stopping unwanted behaviors and separating the victim from the offender. And most importantly, they are meant to hold offenders accountable to the courts for their adverse actions. Without this tool designed to intervene in this pattern of behaviors, offenders' actions are given credence to continue in pursuit of imagined or lost relationships.

[¶ 43] Jess was not held accountable for his actions and Tina George was not provided with the safety that she deserved.

[¶ 44] Additionally, it has been long standing that all people are afforded fundamental, unalienable rights. The United States Declaration of Independence states that all people are entitled to three unalienable rights – Life, Liberty and the pursuit of Happiness. The State of North Dakota ensures all people have certain inalienable rights,

among which are those of enjoying and defending life and liberty, along with pursuing and obtaining safety and happiness.

[¶ 45] No person shall be able to rightfully deny another person of these rights.

These are basic, fundamental human rights that is afforded to all people.

[¶ 46] Jess took these basic human rights away from Tina.

[¶ 47] WHEREFORE, ND CAWS respectfully requests this Court to reverse the Judicial Referee's decision and remand this case back to the lower court with an Order mandating that the lower court grant Tina's Petition for Disorderly Conduct Restraining Order.

[¶ 48] Respectfully submitted this 28th day of August, 2014.

**NORTH DAKOTA COUNCIL ON  
ABUSED WOMEN'S SERVICES**

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**¶ 49] CERTIFICATE OF SERVICE**

¶ 50] A true and correct copy of this document was sent by e-mail on August 28,  
2014

to:

Gregory Ian Runge, Counsel for Petitioner, Tina M. George, via e-mail at  
executor@btinet.net; and

Suzanne Schweigert, Counsel for Respondent, Jess J. George, via e-mail at  
sschweigert@smithbakke.com.

¶ 51] Dated this 28th day of August, 2014.

/s/Mikayla Jablonski Jahner

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