

IN THE SUPREME COURT
STATE OF NORTH DAKOTA
Supreme Court No. 20140063
Burleigh Co. No. 2014-CV-00152

Tina M. George,

Petitioner and Appellant,

v.

Jess J. George,

Respondent and Appellee.

APPELLANT'S BRIEF

**An Appeal from a South Central District Court's Order of
Dismissal From a Hearing on a Petition for Disorderly
Conduct Restraining Order Held and Filed on
February 10, 2014, Mr. Wayne D. Goter, Judicial Referee, Presiding.**

Mr. Gregory Ian Runge (ID. #047240)
Attorney at Law
1983 E. Capitol Ave.
Bismarck, North Dakota 58501
(701) 222-1808
executor@btinet.net
Attorney for Petitioner/Appellant

Questions Presented for Review

I.

**Whether the Trial Court Erred in Denying Tina's
Request for a Disorderly Conduct Restraining Order.**

Table of Contents

I. Statement of the Case.....	1
II. Statement of the Facts.....	7
III. Jurisdiction.....	37
IV. Argument.....	39
A. The District Court Erred When he Dismissed Tina’s Petition for a Disorderly Conduct Restraining Order.....	40
1. The Petition was Filed, the Temporary Order was Granted and Served.....	41
2. Tina Presented Reasonable Grounds for the Judicial Referee to Have Granted Her a Disorderly Conduct Restraining Order.....	44
V. Conclusion.....	65

Table of Authorities

Baker v. Mayer, 2004 ND 105, 680 N.W.2d 261..... 45, 60

Cave v. Wetzel, 545 N.W.2d 149 (N.D. 1996)..... 42, 58

Cusey v. Nagel, 2005 ND 84, ¶ 7, 695 N.W.2d 697. 47

Gonzalez v. Witzke, 2012 ND 60, 813 N.W.2d 592..... 47, 54, 57, 58

Hanisch v. Kroshus, 2013 ND 37, 827 N.W.2d 528..... 47

Moser v. North Dakota State Highway Comm'r,
369 N.W.2d 650, 652 (N.D.1985)..... 59

Rebel v. Rebel, 2013 ND 164, 837 NW.2d 351..... 47

Salvaggio v. North Dakota Dept. of Transp.,
477 N.W.2d 195, 197 (N.D.1991)..... 59

State v. Beaton, 516 N.W.2d 645 (N.D.1994)..... 59

State v. George, Burleigh County Case No. 08-2014-CR-00486, n.1. 48, 55

Svedberg v. Stamness, 42, 45, 59, 60

Tibor v. Lund, 1999 ND 177, 599 N.W. 301. 45, 60

Tina M. George v. Jess J. George,
Burleigh County Case No. 08-2013-DM-00321. 10, 12

Tina M. George v. Jess J. George,
Burleigh County Case No. 08-2013-CV-01056..... 10, 12

Wetzel v. Schlenvogt, 2005 ND 190, 705 N.W.2d 836..... 47, 54

Williams v. Spilovoy, 536 N.W.2d 383 (N.D. 1995). 42, 58

Wishnatsky v. Huey, 197 ND 35, 560 NW. 2d 878..... 42

Witte v. Hjelle, 234 N.W.2d 16 (N.D.1975). 59

Wolf v. ND Highway Comm'r, 458 N.W.2d 327, 329 (N.D.1990)..... 59

Zietz v. Hjelle , 395 N.W.2d 572, 574 (N.D.1986).	59
North Dakota Constitution	
N.D. Const. Art VI,§6.	38
N.D. Const. Art VI,§8.	38
North Dakota Century Code	
N.D.Cent. Code 12.1-31.2.	38, 42, 59, 60, 63
N.D.Cent. Code 27-05-06(1)..	38
N.D.Cent. Code 28-27-01.. . . .	38
N.D.Cent. Code 28-27-02.. . . .	2, 38
N.D.Cent. Code 29-01-12(1)..	38
N.D.Cent. Code 29-28-06.. . . .	38
North Dakota Rules	
N.D.R.App. P. 4.	3
N.D.R.App. P. 4(b).	38
N.D.S.Ct.Admin. Rule 13, sec. 5(a)(1).	38

1

I. Statement of the Case

2 This is an Appeal from a South Central District Court's Order of Dismissal
3 From a Hearing on a Petition for Disorderly Conduct Restraining Order Held and
4 Filed on February 10, 2014, Mr. Wayne D. Goter, Judicial Referee, Presiding. This
5 appeal is taken under section 28-27-02 of the North Dakota Century Code.

6 This appeal is also brought under Rule 4 of the North Dakota Rules of
7 Appellate Procedure. The Notice of Appeal and request for transcript were served
8 on opposing counsel and filed with the District Court on February 11, 2014.
9 **Register of Actions [Hereinafter Doc Id# __] Doc ID# 18-20. On Appendix [A.]**
10 **27.**

11 On January 17, 2014, Tina George, petitioner/appellant in this action, filed
12 a petition for a for Disorderly Conduct Restraining Order. **Doc ID# 1, A 3.** A
13 Temporary Disorderly conduct Restraining Order was granted the same day. **Doc**
14 **ID# 2, A.14.** The respondent/appellee was served on January 22, 2014. **Doc ID**
15 **# 6.**

16 The hearing that was scheduled for January 27, 2012 was rescheduled for
17 February 10, 2014. Counsel for Jess George would not be available for the January
18 hearing. **Doc ID# 3, 7.**

19 The hearing was held as scheduled. **Transcript 2-25. [Hereinafter Tr. ____].**
20 Only Tina testified. **Tr. 3-24.**

21 The referee did not hear any other testimony. **Id.** The referee entered an
22 order dismissing the Temporary Disorderly Conduct Restraining Order and the

Petition for Disorderly Conduct Restraining Order. **Doc ID#26, Tr. 24-25.**

8

II. Statement of the Facts

9 Tina filed for divorce and moved out of marital home on April 9th, 2013. **Tr. 4-9, A.5. See also, Tina George v. Jess George**, Burleigh County Case No.08-2013-DM-00321. Tina move into an apartment on Capitol Avenue in Bismarck at that time. **Tr.5.** She remained in that apartment until she move into her present residence on 33rd Street also in Bismarck. **Tr. 5.**

10 Subsequently, Jess would send cards, drop off cards and letters, drive through the parking lot at Tina's work and leave her notes under her wiper blades and send notes to her through the children. **Id.** There were over 20 notes/cards/letters between April 9, 2013 and the third week in May, when Tina filed for a disorderly conduct restraining order because of his behavior toward her at that time. **See, Tina M. George vs. Jess J. George**, Burleigh County Case No. 08-2013-CV-01056, Exhibit A. Jess would follow her, drove through the parking lot of her apartment several times a day on many occasions. **Tr. 9. A.5.** He sat up the street and watched to see when she came in or went out of her apartment. **Tr. 10.** He would constantly drive through the parking lot at her place of work, repeatedly. **Id.** He would even wait in the parking lot at her work place until she got off work to talk to her. **Id.**

11 He would drive up next to her unexpectedly while she was in the line at a drive through fast food restaurant. **Id.** He even got into her security apartment building when he was not invited there and had, in fact, been told not to come

around. **A.5.** He continued to call and text her, endlessly. **Id.** When he didn't get the responses he wanted, he resorted to yelling at Tina, telling her to "stay the fuck away" and that if she thought the grass was greener on the other side of the fence, she should stay on the other side of the fence. **Id.** Once he told her, when he was angry, that he loved her so much, but that she was "too fucking stupid to see it." **Id.** She had to report two violations of the Temporary Restraining Order, as he continued to attempt to contact her. **Id.**

12 Her Interim Order hearing was scheduled for the first week in July and they were having a lot of trouble agreeing on anything as far as to when the children would be at her house and when they would be at his house. **Id.** By this time, May 24, 2013, the Temporary Restraining Order was denied. **See, Tina M. George vs. Jess J. George**, Burleigh County Case No. 08-2013-CV-01056. Doc ID# 8.

13 Within twenty minutes of leaving the courtroom the day of the Disorderly Conduct Restraining Order Hearing, Mr. George drove up beside her while at another fast food restaurant ordering food wanting to "just talk" to Tina. **Tr.10. A.5.** Tina told him to leave her alone. **Tr. 10-11.** She told him to stop calling her. **Id.** She told him to stop texting her. **Id.** She told him to stop following her. **Id.**

14 The cards, letters, notes, and other items were left on her vehicle or sent with their children when they would return to her apartment. **A.5.** All of these communications begged her to give him another chance. **Id.** She continued to tell him that she was done. **Id.** Their relationship was over. **Id.** She told him that she filed for divorce because she no longer wanted to be married to him. **Id.** She did

not want to talk to him anymore. **Id.** However, he continued to call, write, and text stating that he was still in love with her. **Id.**

15 When ask if there had been a lot of trouble agreeing on their parenting time, Tina stated:

There's not a lot of trouble agreeing on when the kids would be at his house or at my house. The trouble was constant text messages, phone calls, stopping by, driving through, stopping at my place of employment parking lot, driving up next to me at Wendy's drive thru and McDonalds drive thru, unannounced, uninvited asking me to, "Tina, please talk to me. Please let's work this out. Tina, please can't we just talk? Can't we be adult enough? Why? I love you, and we've got enough love. We can work this out." And I told him, "No. I'm done. It's over. I don't want to talk about it. I'm burnt out. I'm just done. I just want you to leave me alone.

Tr. 10-11.

16 She also asked him not to drive through the parking lot of the apartment complex where she was living. He had no reason to be there. **Tr. 11.** He ignored her requests and continued to call and text and drive up in fast food restaurant drive thru's, which were several different ones across Bismarck. **Id.**

17 Prior to the parties tenth anniversary, which was on June 7, 2013, Tina informed Jess that she did not want to do anything for her anniversary. **Tr. 12.** They had planned a trip. Tina did not want to go at this point. So, Jess sent ten dozen vased roses to her place of employment. Each of the vases had a card stating, "Trust me." **Id.**

18 Another incident that took place at her place of employment. **Tr. 12.** After July 4 of 2013, Tina and co-worker walked out of Tina's place of employment. **Id.** Tina and her co-worker observed that Jess was parked in the parking lot right next

to Tina's vehicle. **Id.** Tina walked straight to her vehicle. **Id.** She could not get into her vehicle because he was blocking the way. **Tr. 12-13.** She could not get around him to avoid talking to him. **Id. at 13.**

19 They then got into an argument. **Id.** Again, as before, Jess continued with his incessant wanting to working things out and trying again. **Id.** Finally, she eventually get around him, but not before "freezing half to death." **Id.**

20 On December 25, 2013, according to the Interim Order, the children were to be with Tina from the time that school got out until Christmas day at 10:00 a.m..
Id. 13-14. They were then to go with Jess at 10:00 a.m. until they returned to school on January 2, 2014. **Id.**

21 Tina remembers being in a hurry to get the childrens' bags packed and get them ready to go to Jess's house by 10:00 a.m..
Tr. 14. Jess called one of the boys and said, "Are you ready to go, because we need to get going. We're going to your Aunt Colleen's today in Washburn, and she's having lunch around noon or 1:00 or whatever." **Id.**

22 Tina was desperately trying to get them ready as she was trying to get herself ready to go to church by herself, as well. **Id.** When she was in her room she looked out the window. She saw Jess drive by her house very slowly before the boys even left. **Id.** Even after the boys left in their own car, Tina saw Jess drive by her house again. **Id.**

23 When Tina finally pulled up to the church, she was busy turning off her work and cell phone to go into the church. **Tr. 15.** When she looked up, Jess was

parked right beside her in the middle street. **Id.** He got out of his vehicle and Tina got out of her vehicle. **Id.** She held her hand up, and said, "Jess, I don't want to talk to you. I'm going to church." **Id.** Jess then said to her, "Tina, just wait. I have something for you." **Id.** Tina replied, "I don't want it." **Id.** Jess said, "It's from the boys, Tina." **Id.** Jess then handed her a bag. **Id.** At this point Tina didn't know what to do because the bag was allegedly from her two children. **Id.** So, she said thanks and threw the bag in her vehicle. **Id.** As she backed out of the door of her vehicle, Jess said, "Can't we just talk? Can't we just work this out?" **Id.** She started to crying. **Id.** He then said to her, "Tina, I know I made mistakes. I know I messed up, and I love you more than anything. Can't we just work this out? I know there's a lot of love." **Id.** Tina then replied, "Jess, I am tired. I am burnt out. I don't want this. **Id.** I told him repeatedly, "I filed for divorce because I wanted a divorce. I don't want to talk about it. I don't want to work things out. I don't want to go to counseling. I don't want anything. I just want you to leave me alone." **Tr. 16.**

24 She told him she was late for church. **Id.** He stated "Not even a Merry Christmas?" **Id.** Tina responded, "Have a good time out at your sister's with the boys." **Id.**

25 Tina next testified about an incident that took place the day before her divorce from Jess was final (*Tina George v. Jess George*, Burleigh County Case No.08-2013-DM-00321. Doc ID# 46.), on December 29, 2013. **Id.** Tina's family had a Christmas get-together in Mandan. **Id.** The children were at Jess's house at the time. **Id.** Tina talked to Jess, advising him that one of them had to make sure

that the children got to her uncle's home in Mandan for that Christmas celebration as Tina felt it was important for the children to remain connected with both sides of the family. **Id.** Tina and Jess got into an another argument. **Id.** This time it was about who was going to pick up the children. **Id.** Tina told him that she would pick them up and take them to Mandan. **Id.**

26 When Tina arrived at her uncle's home, the children were already there. **Tr.**
17. She discussed with them their attitudes over the holidays, i.e., they would not call her or respond to her calls or texts. **Id.** She went for days without hearing anything from them and she explained to them how disrespectful it was toward her. **Id.**

27 She began crying and then thought she didn't want to put a damper on the Christmas party. **Id.** So, she left and decided she would back to Bismarck, regroup, come back later. **Id.**

28 Tina's uncle lives north of Bonanza in Mandan. **Id.** Jess lives north of U[nited] P[arcel] S[ervice] on Centennial Road. **Id.** So, before Tina got to the clover leaf loop on the intersection that goes to Grant Marsh Bridge, Jess was right beside tina on the interstate driving "neck and neck" with her. **Id.** She states that she knew he was there. **Id.** She didn't look over. **Id.** She didn't signal. **Id.** She even sped up to eighty (80) miles an hour and he kept pace with her. **Id.** She slowed down to like sixty (60) miles an hour. He still right next to her and he was right next to her. **Id.**

29 She testified that she was scared. **Id.** She didn't know where he came from.

Id. She didn't know why he was there . **Id.** She sped up again. **Tr. 18.** She took the Bismarck State College exit. **Id.** She pulled into the lefthand turn lane to drive east. **Id.** Jess pulled up next to her. **Id.** While the signal light was red, Tina could hear him yelling, "Tina, Tina, Tina." **Tr. 18.** She wouldn't look at him. **Id.** As soon as the light turned green, she took off. **Id.** At the next opportunity, Tina just started driving in an evasive fashion to lose Jess. **Id.** She didn't know whether he was still following her. **Id.** She finally drove into Highland Acres. **Id.** She remained in Highland Acres, turned off her lights, engine and hid from view in her car. **Id.** She stayed there for about a half an hour. **Id.** She went to the Bismarck Police Department and filed a report. **Id. A.9.** After she filed the police report, she called a couple people she knew and told them tha she wasn't going to be coming back to the party. **Tr. 18.** She was going to go home and lock her doors. **Id.**

30 Tina also testified about the extremes she would go to just to avoid having Jess see her or find out whether she was home or not. **Tr. 19.** Many times she would have to park away from her apartment in order to avoid Jess. **Id.** There was an apartment complex, several blocks away from where her apartment was located. **Tr.** She would drive into the back of that apartment complex, park her vehicle and grab her stuff. **Id.** She would run down the back side of her apartment complex, down a hill, walk along the retaining wall. **Id.** She then had to jump into the landscaping rocks along the retaining wall, run to back door of the secured building, unlocked it and went up to her apartment. **Id.** She'd lock her door and close her blinds. **Id.**

31 She also testified that Jess George had admitted that he had been tampering with her phones. **Id.** Tina stated that the the week prior to January 16, 2014, Jess had called from one of her children's phones. **Id.** Jess wanted to know who a person named Steve was. **Id.** Jess wanted to know why would this person would call and leave a message on one of the childrens' phones. **Id.** Tina said, "he was somebody that I went to a group Christmas or New Years Eve party with, but it was a group function." **Id.** Jess responded, "Well, why would he say that he loved you and that he misses you?" **Tr. 19-20.** Tina replied, "Well he didn't. How do you know that?" **Tr. 20.** Jess stated that he heard it on V.'s voicemail. **Id.** Tina said, "That's not true." **Id.** They then proceeded to argue about that. **Id.** He finally admitted to Tina that he had pulled it off of her cell phone voicemail. **Id.** When asked how did Jess get access to your cell phone, Tina stated that Jess knew her password. **Id.**

Tina told him, "You don't have any right to do that. You cannot do that. This is my phone. This is my phone. This is my phone policy. I had this phone all in my name. I've paid the bill since March of 2013. It doesn't matter if you know what my password used to be or not. It is illegal. You can't do that."

Id.

32 Tina has turned over all letters, text messages, phone calls, voice mails, notes left under her wiper blade from July 1, 2013 to present. **Tr. 21.** The Bismarck police has been looking into this matter since October, 2013. **Id.**

33 As a result of these behaviors on Jess' part towards Tina, Tina has to put a iron chair underneath her locked front and back door at night. Tina has to lock her

bedroom door when she goes to bed at night. She is installing security cameras, and has just tested for my concealed weapon permit. She keeps a hammer and a screwdriver with her when she sleeps. **Tr. 22.** Tina is in fear for her safety. **Id.**

34 When asked what she wanted the court to do for her, Tina stated:

A. I just want him to make him stop. Just leave me alone. Just not come near me and to not keep calling me and use unidentified and no caller ID or blocked phone numbers and use my kids' phone and have his friend call me and have his sister call me. I just want him to quit.

Q And how long would you want this restraining order put in place?

A. As long as it can. This has been a year that -- has gone on for years. And I'm -- I just want it to quit.

Tr. 23.

35 The court did not require Jess George testify to counter Tina's testimony. Instead, the court dismissed Tina's Temporary Disorderly Conduct Restraining Order, stating:

I'm going to dismiss this case. And heres why: 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. So you've got bigger problems to worry about, namely the criminal case, whatever it is that you're charged with, stalking. But I don't find it's disorderly conduct.

But you should be warned if there's more stuff that happens after this and that comes back here, the only inference I can draw from the future conduct, knowing how she feels, is that you intended to hurt her.

* * *

If I see another petition of future conduct, given what she's had

to say today with the criminal charge, the only conclusion I can draw if it's on my table is that you intended to hurt her, which is the thing that's missing today.

I'm going to dismiss. You've got bigger problems to worry about. There was a piece of evidence that concerned me that was hacking into her phone, intentionally invaded her sense of security and privacy. But I have digression even then to issue a restraining order, and I'm going to exercise my judicial digression not to. 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. But you've been warned. Temporary order is dismissed then.

36 Tina now appeals.

37 **III. Jurisdiction.**

38 The district court had jurisdiction under N.D. Const. Art. VI, §8, and N.D.C.C. §27-05-06(1) and N.D.C.C. 12.1-31.2 and North Dakota Supreme Court Administrative Rule 13, sec. 5(a)(1). The appeal from the district court was filed under N.D.R.App.P.4(b). This Court has jurisdiction under N.D. Const, Art. VI, §6, N.D.C.C. §29-01-12, N.D.C.C. §29-28-06, N.D.C.C. 28-27-01 and .N.D.C.C. 28-27-02.

39 **IV. Argument**

40 **The Judicial Referee Erred when it Dismissed Tina's
Petition for a Disorderly Conduct Restraining Order.**

41 **1. The Petition was Filed, the Temporary
Order was Granted and Served.**

42 This Court states:

The language of Chapter 12.1-31.2, N.D.C.C., relevant . . . provides: 12.1-31.2-01. Disorderly conduct restraining order--Penalty.

"1. '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.

"2. A person who is a victim of disorderly conduct or the parent or guardian of a minor who is a victim of disorderly conduct may seek a disorderly conduct restraining order from any court of competent jurisdiction in the manner provided in this section.

"3. A petition for relief must allege facts sufficient to show the name of the alleged victim, the name of the individual engaging in the disorderly conduct, and that the individual engaged in disorderly conduct. An affidavit made under oath stating the specific facts and circumstances supporting the relief sought must accompany the petition.

"4. If the petition for relief alleges reasonable grounds to believe that an individual has engaged in disorderly conduct, the court, pending a full hearing, may grant a temporary disorderly conduct restraining order ordering the individual to cease or avoid the disorderly conduct or to have no contact with the person requesting the order. A temporary restraining order may be entered only against the individual named in the petition. The court may issue the temporary restraining order without giving notice to the respondent. The temporary restraining order is in effect for not more than thirty days, unless otherwise terminated by the court.

"5. The court may grant a disorderly conduct restraining order ordering the respondent to cease or avoid the disorderly conduct or to have no contact with the applicant if:

* * * * *

"d. The court finds after the hearing that there are reasonable grounds to believe that the respondent has engaged in disorderly conduct. 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."

We most recently summarized the operation of this statute in **Cave v. Wetzel**, 545 N.W.2d 149, 150 (N.D.1996):

"Under section 12.1-31.2-01, NDCC, the district court is authorized to grant a 'no contact' order if the court finds 'reasonable grounds to believe that the respondent has

engaged in disorderly conduct.' See **Williams v. Spilovoy**, 536 N.W.2d 383 (N.D.1995). 'Disorderly conduct' is defined as '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.' N.D.Cent.Code § 12.1-31.2-01(1). Since chapter 12.1-31.2, NDCC, does not define 'reasonable grounds,' we have construed the 'reasonable grounds' requirement to be synonymous with 'probable cause.' Williams, supra [citing **Svedberg v. Stamness**, 525 N.W.2d 678 (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, 197 ND 35 ¶7, 560 N.W. 2d 878.

43 In this case, Tina properly filed her petition on January 17, 2014 and the temporary order was granted and filed the same day. **Doc ID# 1-2.** The Temporary Order and Notice of Hearing were properly served on Jess George on January 22, 2014. **Doc ID# 6.**

44 **2. Tina Presented Reasonable Grounds for the Judicial Referee to Have Granted Her a Disorderly Conduct Restraining Order.**

45 Again, regarding reasonable grounds this Court has stated:

[¶ 13] We have held that reasonable grounds for a disorderly conduct restraining order is "synonymous with probable cause." **Tibor**, 1999 ND 176, ¶ 7, 599 N.W.2d 301. We have also held that under N.D.C.C. § 12.1-31.2-01, reasonable grounds exist for a disorderly conduct restraining order when a person of reasonable caution would believe the facts and circumstances show that the person committed disorderly conduct. **Tibor**, at ¶ 7 (quoting **Svedberg v. Stamness**, 525 N.W.2d 678, 682 (N.D.1994)). "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." Tibor, at ¶ 7.

***Baker v. Mayer*, 2004 ND 105 ¶13, 680 N.D.2d 261 .**

46 Repeating the referee's closing remarks, he states:

I'm going to dismiss this case. And heres [sic] why: 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. So you've got bigger problems to worry about, namely the criminal case, whatever it is that you're charged with, stalking. But I don't find it's disorderly conduct.

But you should be warned if there's more stuff that happens after this and that comes back here, the only inference I can draw from the future conduct, knowing how she feels, is that you intended to hurt her.

* * *

If I see another petition of future conduct, given what she's had to say today with the criminal charge, the only conclusion I can draw if it's on my table is that you intended to hurt her, which is the thing that's missing today.

I'm going to dismiss. You've got bigger problems to worry about. There was a piece of evidence that concerned me that was hacking into her phone, intentionally invaded her sense of security and privacy. But I have digression even then to issue a restraining order, and I'm going to exercise my judicial digression not to. 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. But you've been warned. Temporary order is dismissed then.

Tr. 24-25.

47 In ***Rebel v.Rebel***, 2013 ND 164, 837 N.W.2d 351, it was said that:

[11] "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). " Disorderly conduct" is defined as " intrusive or unwanted acts, words, or gestures that are intended to adversely affect the safety, security, or privacy of another person," but " does not include constitutionally protected activity." N.D.C.C. § 12.1-31.2-01(1).

[12] The district court may grant a temporary disorderly conduct restraining order without notice to the respondent and pending a full hearing when a petitioner has alleged " reasonable grounds" to believe that an individual has engaged in disorderly conduct. N.D.C.C. § 12.1-31.2-01(4). If the petitioner complies with procedural requirements under N.D.C.C. § 12.1-31.2-01(5), the court may then grant a restraining order if, after a hearing, the court finds " reasonable grounds" to believe the respondent has engaged in " disorderly conduct." See **Hanisch**, 2013 ND 37, ¶ 10, 827 N.W.2d 528. " In other words, an objective, reasonable person must believe the respondent has engaged in ... [disorderly conduct]." **Wetzel v. Schlenvogt**, 2005 ND 190, ¶ 19, 705 N.W.2d 836. 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. **Hanisch**, at ¶ 11; **Gonzalez**, 2012 ND 60, ¶ 23, 813 N.W.2d 592.

[¶ 13] Generally, the petitioner's case must be established through testimony in a full evidentiary hearing before the district court, rather than affidavits alone, with an opportunity for cross-examination. See **Hanisch**, 2013 ND 37, ¶ 11, 827 N.W.2d 528. " 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." **Cusey v. Nagel**, 2005 ND 84, ¶ 7, 695 N.W.2d 697. 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 v. Rebel, 2013 ND 164, ¶¶ 11-13, 837 N.W.2d 351 (N.D. 2013)

48 The referee abused his discretion. He acted arbitrary, unreasonable and in

an unconscionable manner. On the one hand the judicial referee states he's going to dismiss the case. **Tr. 24.** And, then the referee turns around and states that "[a]s 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 charge."¹ **Id. (emphasis added.)** The referee goes on to say that Mr. George's contact with Tina, "[o]bviously it has a negative impact on her." **Id.** He also states "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. 25. (emphasis added.)**

49 The judicial referee seems to say that Tina has established reasonable grounds. The referee states that Jess George's conduct has had a "negative impact on her" and Tina testified to that fact. **Tr. 15-16.**

50 The reason Tina petitioned the court for the restraining order in the first place, was to stop Jess George from stalking her at her previous apartment, at her present home and at her work place. **Tr. 8.** Tina wanted to take her power back. The only way to do that was to forge ahead with the petition. The petition was the only way for her to prevent Jess George chasing her up the interstate at break neck speeds (**Tr.18-19**) or hacking into her cell phone. **Tr. 20-21.**

51 However, it would appear that not even hacking into Tina's cell phone was enough to give the judicial referee reasonable grounds to grant Tina's request for

1

On February 14, 2014, Mr. George was charged with violating Tina's Temporary Disorderly Conduct Restraining Order for allegedly having telephone contact with Tina on January 24, 2014 at her place of work. **See, State v. George**, Case No. 08-2014-CR-00486.

her restraining order.

52 The referee stated:

I'm going to dismiss. You've got bigger problems to worry about. There was a piece of evidence that concerned me that was hacking into her phone, intentionally invaded her sense of security and privacy. But I have digression even then to issue a restraining order, and I'm going to exercise my judicial digression not to. 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. But you've been warned. Temporary order is dismissed then.

Tr. 25.

53 Even the referee finds intent in Jess George's hacking of Tina's cell phone.

And, this would have been enough to grant her petition.

54 This Court has said,

A single occurrence of disorderly conduct may be sufficient for a district court to grant a disorderly conduct restraining order. *Wetzel*, 2005 ND 190, ¶ 21, 705 N.W.2d 836. A "pattern" of disorderly conduct is not required. *Id.* "The statute's use of plural words such as acts, words, and gestures does not mean that a pattern of behavior is required." *Id.* at ¶ 19. "A statute's use of a singular or plural word includes its opposite, unless there is a plain intention to do otherwise." *Id.* (citing N.D.C.C. § 1-01-35). The disorderly conduct restraining order "civil remedy cannot be denied [to] people whose safety, security, or privacy has been intruded upon simply because the respondent's actions occurred at one time." *Id.* at ¶ 20.

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).

Gonzalez v. Witzke, 2012 ND 60, ¶¶23-24 813 N.W.2d 592

55 Here, even disregarding all other incidents Tina testified to, the single

occurrence of hacking into her cell phone was sufficient to grant tina's petition for a disorderly conduct restraining order. Based upon the nature of the judicial referee's statement and ruling, Tina believes that the real reason for this dismissal was that Jess George had bigger problems, including the bond order. **Id.** However, not even the bond order has a no contact clause restricting contact with Tina. **See n.1 above.**

56 The judicial referee refused to grant Tina's among a myriad of allegations Tina made in her testimony, that is, Jess George constantly driving by her apartment and her then by her newly purchased home (**Tr. 8**); bothering her at her place of employment (**Tr.10**); following Tina to and through the drive-thru restaurants (**Tr.10-11**); following Tina to her church (**Tr. 14-16.**); the wild chase of Tina on the interstate highway (**Tr.18-19**); and hacking into her cell phone (**Tr. 20-21.**) Just to recite a few. All the time, Tina was tell Jess to leave her alone. **Tr. 10-11, 15-16.** And yet, none of these incidents were sufficient for the referee to grant Tina's petition.

57 And, yet a man who calls a woman a "troll" and a "perjurer" is hit with a disorderly conduct restraining order. **Gonzalez v. Witzke**, 2012 ND 60, ¶¶ 4, 5, 12, 25, 26, 813 N.W.2d 592. In this case, Gonzalez trimmed a few of Witzke's tree limbs that were hanging over her fence and into her yard in order for her to prevent harm to her fence. **Id. at ¶ 4.** While she was trimming these branches, Witzke, who was video recording her actions, he called a "troll and a perjurer. **Id.**

58 The district court granted the restraining order for a two years because

Witzke called her “troll” and a “perjurer” while video recording her. **Id. at ¶ 5.** This Court concluded that:

[Witzke’s oral statements about a “troll” and a “perjurer,” by themselves, may not establish reasonable grounds to conclude he engaged in disorderly conduct. *But see Cave*, 545 N.W.2d at 151 (quoting *Williams v. Spilovoy*, 36 N.W. 383, 385 (N.D. 1995) (“[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.”)). In this instance, however, considering Witzke’s statements coupled with his video recording of Gonzalez and her mother in Gonzalez’s yard as his pattern of behavior toward Gonzalez dating back to 2006, we conclude there is sufficient evidence to establish reasonable grounds to believe Witzke engaged in disorderly conduct. See *id.* At 152; *Skadberg*, 2002 ND 97, ¶ 10, 644 N.W.2d 873. A reasonable person could conclude Witzke engaged in disorderly conduct under N.D.C.C. § 12.1-31.2-01(1) because his behavior was intrusive and unwanted had he intended to affect the safety, security or privacy of Gonzalez. We therefore conclude the district court did not abuse its discretions in granting Gonzalez a disorderly conduct restraining order against Witzke.”

Id. at 25.

59 In *Svedberg v. Stamness*, 525 N.W.2d 678 (N.D. 1994), this Court held that :

To issue a disorderly conduct restraining order, the trial court must find "reasonable grounds to believe that ... disorderly conduct" has been committed. [2] NDCC Sec. 12.1-31.2-01(4) (providing guidelines for the granting of a "temporary disorderly conduct restraining order"); Sec. 12.1-31.2-01(5)(d) (providing that subsequent to a hearing a disorderly conduct restraining order may be issued). Nowhere does the statute define what is meant by the phrase, "reasonable grounds." North Dakota does, however, have a long line of cases which have construed the phrase "reasonable grounds" as it has been used in other contexts. See, e.g., *State v. Beaton*, 516 N.W.2d 645, 647 (N.D.1994); *Salvaggio v. North Dakota Dept. of Transp.*, 477 N.W.2d 195, 197 (N.D.1991); *Wolf v. ND Highway Comm'r*, 458 N.W.2d 327, 329 (N.D.1990); *Zietz v. Hjelle*, 395 N.W.2d 572, 574 (N.D.1986); *Moser v. North Dakota State Highway Comm'r*, 369 N.W.2d 650, 652 (N.D.1985) (all discussing the meaning of the term

"reasonable grounds" in relation to DUI arrests under NDCC Sec. 39-08-01). In those decisions we have consistently held that " 'reasonable grounds' is synonymous with the term 'probable cause.' " **Moser**, 369 N.W.2d at 652.

Probable cause exists when the "facts and circumstances within the officer's knowledge " "are sufficient to warrant a [person] of reasonable caution in believing that an offense has been or is being committed." " " **Beaton**, 516 N.W.2d at 647 (quoting Moser, 369 N.W.2d at 652-53 (quoting **Witte v. Hjelle**, 234 N.W.2d 16, 18 Syllabus p 3 (N.D.1975))). In light of this long-standing line of cases we will construe "reasonable grounds" as used in NDCC section 12.1-31.2-01 with an eye to our precedent.

Reasonable 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. Stamness, in the instant case, complains that the facts and circumstances presented to the judge did not create "reasonable grounds" and, therefore, the restraining order was erroneously issued. We have reviewed the transcript and the affidavits submitted in the instant case and are convinced that reasonable grounds exist to support the issuance of the order.

Svedberg v. Stamness, 525 N.W.2d 678, 681-82, (N.D. 1994).

60 In **Baker v. Mayer**, 200 ND 105, 680 NW.2d 261, Baker v. Mayer, 680 N.W.2d 261 (N.D. 2004):

We have held that reasonable grounds for a disorderly conduct restraining order is "synonymous with probable cause." **Tibor**, 1999 ND 176, 7, 599 N.W.2d 301. We have also held that under N.D.C.C. 12.1-31.2-01, reasonable grounds exist for a disorderly conduct restraining order when a person of reasonable caution would believe the facts and circumstances show that the person committed disorderly conduct. Tibor, at 7 (quoting **Svedberg v. Stamness**, 525 N.W.2d 678, 682 (N.D.1994)). "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." Tibor, at 7.

Id. at ¶ 13.

61 Reasonable grounds/probable cause exist to show that Mr. George committed disorderly conduct. Tina has presented evidence of specific acts that constitute disorderly conduct. As stated above, these acts consisted of Jess George constantly driving by her apartment and her then by her newly purchased home (**Tr. 8**); bothering her at her place of employment (**Tr.10**); following Tina to and through the drive-thru restaurants (**Tr.10-11**); following Tina to her church (**Tr. 14-16.**); the wild, high speed, chase of Tina up the interstate highway (**Tr.18-19**); and hacking into her cell phone (**Tr. 20-21.**)

62 Again, even the referee found reasonable grounds/probable cause. “There was a piece of evidence that concerned me that was hacking into her phone, intentionally invaded her sense of security and privacy.” **Tr. 25.** The referee found intent to invade Tina’s “sense of security and privacy.” **Id.**

63 This statement echos section 12.1-31.2-01§1 N.D.C.C.: “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.**

64 All of Jess George’s conduct toward Tina, stated above, were intrusive and unwanted. Jess George’s actions were disorderly conduct. The referee recognized that this conduct “intentionally invaded her sense of security and privacy” as it pertained to the hacking of the cell phone which, quite frankly, was the least physically intrusive act as compared to his other invasive acts. The referee abused his discretion when he denied should Tina’s Petition for a Disorderly Conduct

Restraining Order.

65

V. Conclusion

66 For the reasons stated above, Tina George respectfully requests this Court reverse the referee's decision. Ms. George further requests this Court to remand this case back to the lower court with an Order mandating that the lower court grant Ms. George's Petition for Disorderly Conduct Restraining Order.

67 Respectfully submitted this 12th day of May, 2014

/s/ Gregory Ian Runge
Gregory Ian Runge (ID #04724)
1983 E. Capitol Ave.
Bismarck, North Dakota 58501
(701) 222-1808
executor@btinet.net
Attorney for Ms. Tina George

68

CERTIFICATE OF SERVICE

69 I certify that I am the attorney representing Tina George to this action. I made service of **BRIEF FOR THE APPELLANT and APPENDIX TO APPELLANT'S BRIEF** by electronic transmission (e-mail) true copies to Ms. Suzanne M. Schweigert, attorney for the respondent/appellee, at 122 E. Broadway Ave., Bismarck, North Dakota 58501 at sschweigert@smithbakke.com on this 12th day of May, 2014, in accordance with Rules 4 and 5(f) of the North Dakota Rules of Civil Procedure and Supreme Court Order 14.

/s/ Gregory Ian Runge

Gregory Ian Runge (ID. #04724)

1983 E. Capitol Ave

Bismarck, North Dakota 58501

(701) 222-1808

executor@btinet.net

Attorney for Respondent/Appellant